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APPENDIX

Supreme Court, U.S.
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Supreme Court of the United States

TERM, 1971

No. 70-5064

RUTH J. JEFFERSON, ET AL.,
Appellants,

—v.—

BURTON G. HACKNEY, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT FILED FEBRUARY 4, 1971
JURISDICTION NOTED OCTOBER 12, 1971

Supreme Court of the United States

TERM, 1971

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

CA-3-3012-B

Requests 3-Judge Court
Judge Hughes, Judge Goldberg & Judge Taylor

Jury demand date:

RUTH J. JEFFERSON, EMMA GIPSON, and JOSE APOLINOR VASQUEZ, Individually, on Behalf of Their Minor Children and on Behalf of All Others Similarly Situated.

vs

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare; WILL BOND, Chairman of the State Board of Public Welfare; W. KENDALL BAKER, Vice Chairman of the State Board of Public Welfare; LOUIS SARAZAN, Secretary of the State Board of Public Welfare; ROSALIND GILES, Director of Field Staff, Dallas Regional Office of the State Department of Public Welfare; Individually and in Their Official Capacities

For plaintiff:

Ed J. Polk and David J. Candish—RI 2-1631
Dallas Legal Services Project
301 N. Market Street
Dallas, Texas 75202

Douglas R. Larson—RI 7-2224
408 N. St. Paul
Dallas

Carl Rachlin
164 Madison Ave., New York

Edward Sparer
Yale University, School of Law
New Haven, Conn.

Douglas Larson—747-2224
980 Hartford Bldg.

For defendant:

Pat Bailey and W. O. Shultz, Asst. Atty. General
Capitol Station
Austin, Texas 78711

Statistical Record	Costs	Date
J.S. 5 mailed 2-28-69 reopened June, 1970	Clerk	in forma pauperis
J.S. mailed JUL. 31, 1969	Marshal	
AUG. 31, 1970	Docket fee	
Basis of Action: CLASS ACTION.	Witness fees	
	Depositions	

Alleges discrimination in reduction of State Welfare Aid, and that State provisions are contrary to the U.S. Social Security Act. Seeks THREE-JUDGE COURT; that certain Articles of State Constitution be declared null & void; remittance of funds denied; perm. & temp. injunction.
State Welfare cks

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Feb. 12	Filed MOTION with attachments FOR LEAVE TO PROCEED IN FORMA PAUPERIS, and Filed ORDER GRANTING LEAVE TO SUE IN FORMA PAUPERIS. STH
Feb. 12	Filed COMPLAINT.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Feb. 12	Filed APPLICATION FOR CONVENING OF THREE JUDGE DISTRICT COURT.
Feb. 12	Issued Summons (5).
Feb. 12	Filed MOTION FOR TEMPORARY RESTRAINING ORDER.
Feb. 12	Filed NOTICE signed by STH addressed to Hon. John R. Brown requesting designation of two Judges.
	(Law Clerk stated that Judge Hughes sent copy of Notice to Judge Brown)
Feb. 17	Filed RETURN ON SUMMONS executed Feb. 13, 1969 by serving Rosalind Giles in person. (MD-18641)
Feb. 20	Filed RETURN ON SUMMONS executed Feb. 17, 1969 by serving Burton G. Hackney, Austin, Tex. (MD-18641)
Feb. 19	Filed ORDER from Circuit Court designating Judge Goldberg and Judge Taylor to sit with Judge Hughes on this action JRF.
Feb. 19	Filed plaintiffs REQUESTS FOR ADMISSION under Rule 36.
Feb. 19	Filed plaintiffs MOTION for leave to serve request for admissions.
Feb. 19	Filed TEMPORARY INJUNCTION. STH.
Feb. 19	Issued 5 writs to serve temporary injunction & given to U.S. Marshal.
Feb. 20	Filed ORDER granting plaintiff's motion for leave to serve request for admissions. STH.
Feb. 24	Filed RETURN ON SUMMONS executed Feb. 17, 1969 by serving W. Kendall Baker in person, Houston, Tex. (MD-18641)

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Feb. 24	Filed RETURN ON SUMMONS AND TEMP. INJUNCTION executed Feb. 20, 1969 by serving Louis Sarazan by delivering to Fern Noblitt, Sec.
Feb. 28	Filed MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT AND A PRELIMINARY AND PERMANENT INJUNCTION.
Mar. 3	Filed defendants ANSWERS to REQUEST FOR ADMISSION. (Rec'd only 3 sets of exhibits and they were given to the 3 judges)
Mar. 5	Filed RETURN ON WRIT TO SERVE TEMP. INJUNCTION executed February 24, 1969, by serving W. Kendall Baker in person
March 6	Filed defendants ANSWER.
March 6	Filed WRITTEN INTERROGATORIES to Defendants.
March 6	Filed Plaintiffs' MOTION TO SHORTEN TIME TO ANSWER INTERROGATORIES.
Mar. 10	Filed RETURN ON SUMMONS and 2 TEMP. INJUNCTIONS executed Feb. 20-26th, 1969 by serving Will Bond, Hillsboro, Texas; and by serving Burton G. Hackney in person, Austin, Tex.
Mar. 10	Filed Defendants' ANSWER TO PLAINTIFFS' MOTION TO SHORTEN TIME TO ANSWER INTERROGATORIES.
Mar. 14	Filed plaintiff's MOTION FOR CONTINUANCE until April 7, 1969.
Mar. 14	Filed ORDER granting motion for continuance until a later date. STH.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Mar. 14	Filed ORDER dissolving Temporary Restraining Order of Feb. 19, 1969. STH.
Mar. 14	Filed ORDER concerning Defendants' Answers to Interrogatories. STH
Mar. 17	Notified attorneys of entry of Order dissolving Temporary Restraining Order and of Order concerning Defts' Answers to Interrogatories.
Mar. 17	Filed Defendants' NOTICE OF HEARING OBJECTIONS TO INTERROGATORIES and attached OBJECTION TO WRITTEN INTERROGATORIES.
Mar. 21	Filed Deft's ANSWERS TO PLTFS' WRITTEN INTERROGATORIES (with attached exhibits)
Apr. 7	Filed Plaintiffs' MOTION TO ADVANCE HEARING ON THE MERITS.
Apr. 7	Filed MOTION FOR LEAVE TO FILE AMENDED COMPLAINT.
April 8	Filed Plaintiffs' SUPPLEMENTAL WRITTEN INTERROGATORIES.
April 8	Filed Plaintiffs' SUPPLEMENTAL REQUEST FOR ADMISSIONS UNDER R. 36.
April 8	Filed ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT. STH
April 8	Filed AMENDED COMPLAINT (detached it from Motion for Leave to File)
April 9	Notice of Order mailed to Pat Bailey, Asst. Attorney General.
Apr. 15	Filed Pltf's MOTION TO RECONSIDER ORDER DISSOLVING TEMPORARY INJUNCTION.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Apr. 17	Filed Defendants' OBJECTIONS TO SUPPLEMENTAL WRITTEN INTERROGATORIES.
Apr. 17	Filed Defendants' OBJECTIONS TO SUPPLEMENTAL REQUEST FOR ADMISSIONS.
Apr. 18	Filed Plaintiffs' MOTION FOR ORDER COMPELLING DEFENDANTS TO ANSWER INTERROGATORIES.
Apr. 16	Filed DEFENDANTS' ANSWERS TO PLAINTIFFS' WRITTEN INTERROGATORIES. (Two large boxes of exhibits in supply room)
Apr. 21	Filed plaintiff's SUPPLEMENTARY WRITTEN INTERROGATORY.
Apr. 21	Filed defendants AMENDED ANSWER.
Apr. 21	Filed defendants ANSWER to plaintiffs motion to reconsider order dissolving temporary injunction.
Apr. 21	Filed defendants answer to plaintiffs motion for order compelling defendants to answer interrogatories.
Apr. 28	Filed defendants MOTION TO CONSOLIDATE.
Apr. 30	Filed defendant's SUPPLEMENTAL answer to plaintiff's motion for order compelling defendants to answer interrogatories.
Apr. 30	Filed defendants ANSWER to plaintiff's SUPPLEMENTAL REQUEST FOR ADMISSIONS.
Apr. 30	Filed defendants ANSWER to plaintiff's SUPPLEMENTAL WRITTEN INTERROGATORY.
Apr. 30	Filed plaintiff's MOTION in opposition to defendants motion to consolidate.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
May 1	Filed RETURN ON WRIT TO SERVE TEMPORARY INJUNCTION executed Feb. 19, 1969 by serving Rosalind Giles in person at the County Courthouse.
Apr. 30	Filed defendants ANSWERS to supplemental written interrogatories.
May 2	Filed ORDER OF CONSOLIDATION. CA 3-3126 transferred from San Antonio Division, their SA69CA76 and consolidated with this cause. STH.
May 2	Filed ORDER overruling plaintiff's motion to reconsider order dissolving temporary injunction. STH.
May 19	Filed PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES.
May 21	Filed letter from David J. Candish requesting to be listed as one of the attorneys of record for the plaintiff.
May 22	Filed Defendants' MOTION FOR EXTENSION OF TIME FOR FILING OF BRIEF AND CONTINUANCE OF TENTATIVE PRE-TRIAL HEARING AND TRIAL DATE.
May 29	Filed Pltf's MOTION IN OPPOSITION TO DEFTS' MOTION FOR CONTINUANCE OF TRIAL DATE.
June 2	Filed DEPOSITION OF Jerome D. Chapman, Jr.
June 3	Filed DEPOSITION of Margaret Gregg.
June 3	Filed Deposition of Will W. Bond
June 3	Filed DEPOSITION OF GUSTAVO M. RAMOS AND ROSALIND GILES

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
June 3	Filed DEPOSITION OF LOUIS ROOSEVELT SARAZAN
June 4	Filed BRIEF of Robert H. Finch, Sec. of HEW as Amicus Curiae with attached exhibits A, B, C, D, E.
June 9	Filed TRIAL BRIEF of plaintiffs Devila and Gutierrez. (CA 3-3126)
June 12	Filed RETURN ON SUBPOENA DUCES TECUM executed May 29, 1969 by serving James West in person.
June 12	Filed RETURN ON SUBPOENAS (3) all executed May 28, 1969 by serving Burton G. Hackney; Margaret Gregg; and Jerome Chapman.
June 12	Filed DEPOSITION OF BURTON G. HACKNEY
June 12	Filed DEPOSITION of Jose Apolinor Vasquez.
June 12	Filed DEPOSITION of Emma Gipson
June 12	Filed DEPOSITION of Ruth Jannell Jefferson.
June 13	Filed RETURN ON SUBPOENA executed June 11, 1969 by serving Glynn Coker in person.
June 13	Filed RETURN ON SUBPOENA DUCES TECUM executed June 10, 1969 by serving James West in person.
June 12	Filed TRIAL BRIEF OF DEFENDANTS.
June 12	Filed STIPULATION OF FACT.
June 12	Filed Defendants' MOTION TO STRIKE PLAINTIFF, RUTH J. JEFFERSON, AS A PARTY.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
June 23	Filed RETURN ON SUBPOENAS (3) all executed June 10, 1969 by serving Margaret Gregg, Austin, Tex; by serving Jerome Chapman, Austin, Tex; and by serving Burton Hackney, Austin, Tex.
June 24	Filed letter from Ed J. Polk addressed to Judge Hughes with attached copies of Summary Judgment and Order entered by Judge Jack B. Weinstein, U. S. District Court, Eastern District of New York, in 69-Civ-355. (Copies were carried by Ed Polk to the Judges)
June 23	Filed NOTICE to take depositions of John Clack & Tom Day.
June 24	Issued deposition subpoenas to John Clack & Tom Day.
June 30	Filed DEPOSITION OF MR. J. B. CLACK.
July 1	Filed JUDGMENT, defendant's motion to dismiss Ruth Jefferson as a party plaintiff is OVERRULED. Payment made by State of Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to the other three programs is not in violation of the Equal Protection Clause of the 14th Amendment, also payment of a lesser percentage is not the result of racial or ethnic prejudice and not in violation of the Federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment, also is not the result of racial or ethnic discrimination. Statewide plan known as E-430 & 434 violates the requirements established by Congressional Amendment 42 U.S.C.A. 402(a) (23) to the AFDC program and is null & void. Defendants are perma-

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
	nently enjoined from enforcing Texas Plan E-430 & E-434 and from receiving funds from the Federal Government until a plan is formulated which carries out the provisions of 42 U.S.C.A. 402(a)(23). This injunction is stayed for 60 days to give the Texas Legislature an opportunity to implement a plan which will conform to the requirements of 42 U.S.C.A. 402(a)(23). (ILG; STH; WMT.)
	Copy of judgment given to attorneys of record in courtroom
July 1	Filed RETURN ON SUBPOENA executed June 30, 1969 by serving Anne Cappleman.
July 1	Filed RETURN ON SUBPOENA DUCES TECUM executed June 30, 1969 by serving Rosalind Giles.
July 8	Filed Plaintiffs' MOTION TO AMEND JUDGMENT.
*July 7	Filed RETURN ON SUBPOENAS DUCES TECUM (2) executed June 30, 1969 by serving John Clack and Tom Day both in person.
July 16	Filed DEFENDANTS' ANSWER TO PLAINTIFFS' MOTION TO AMEND JUDGMENT
July 17	Filed MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE COLUMBIA CENTER ON SOCIAL WELFARE POLICY & LAW.
July 30	Filed Deft's NOTICE OF APPEAL TO THE SUPREME COURT OF THE U.S.
July 31	Filed OPINION of the Three Judge Court STH, WMT, IRG.

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Aug. 1	Filed TRANSCRIPT OF PROCEEDINGS.
Aug. 5	Filed Pltf's NOTICE OF CROSS-APPEAL TO THE SUPREME COURT.
Aug. 13	Filed plaintiffs MEMORANDUM OF LAW supporting the jurisdiction of this court to grant motion to amend judgment.
Aug. 14	Filed defendant's MEMORANDUM BRIEF on Court's jurisdiction to hear motion to amend judgment.
Aug. 14	Filed Corrected Title Sheet on Transcript of Proceedings.
Aug. 14	Filed ORDER amending paragraph 5 of the judgment entered July 1, 1969 which reads as follows: Defendants are permanently enjoined from enforcing Texas Plan E-430 & E-434 providing for payments to recipients of AFDC & are directed, so long as the State has not withdrawn from the program, to formulate & implement a plan which carries out the provisions of 42 U.S.C.A. 402(a)(23). STH; ILG; WMT.
Sept. 10	Filed APPELLATE RECORD STIPULATION & AGREEMENT.
Sept. 17	Filed defendants MOTION TO DISMISS APPEAL. (Hearing set 9-19-69 2:30 P.M.)
Sept. 17	Filed defendants MOTION to assess cost of appeal against plaintiffs. (Hearing set 9-19-69 2:30 P.M.)
Sept. 19	Filed TRANSCRIPT OF PROCEEDINGS of hearings held on Aug. 7, 1969

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Sept. 19	Filed Pltf's RESPONSE TO DEFTS' MOTION TO DISMISS APPEAL AND TO DEFTS' MOTION TO ASSESS COST OF APPEAL AGAINST PLAINTIFFS.
Sept. 19	Filed Pltf's MOTION TO COMPEL DEFTS' TO COMPLY WITH JUDGMENT AS AMENDED ON AUGUST 7, 1969.
Sept. 19	Filed Pltf's MOTION TO AMEND JUDGMENT.
Sept. 23	Filed NOTICE BY PLAINTIFFS-APPELLEES AND CROSS-APPELLANTS TO THEIR INTENTION TO PERFECT AND PROSECUTE APPEAL.
Sept. 25	Mailed Original case papers with Transcripts (2) and exhibits to the Supreme Court, Wash., D. C. Pltf's Exhibits 1, 2, 3, 5, 6, 7, 8 and 9
	* * * * *
Sept. 26	Filed ORDER denying Pltfs' Motion of 9-19-69 to Amend Judgment of this court of July 1, 1969 as amended Aug. 7, 1969. ILG; STH; WMT.
	(attorneys notified) by copy
Sept. 30	Filed Pltf's MOTION TO RECONSIDER, UPON HEARING, THE COURT'S DENIAL OF PLTF'S MOTION TO AMEND JUDGMENT
Oct. 2	Filed Pltf's MOTION TO WITHDRAW MOTION.
Oct. 2	Filed ORDER that the Plaintiffs Motion to Reconsider, Upon Hearing, the Court's Denial of Plaintiff's Motion to Amend Judgment is hereby withdrawn by the Court from any consideration. ILG; STH; WMT
	(all attorneys notified by copy) -7-

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Oct. 3	Filed ORDER that defendants' Appeal is hereby dismissed and that the Cross-Appeal of Plaintiffs DAVILA AND GUTIERREZ, et al is hereby dismissed and appellate cost thus far are hereby assessed against Plaintiffs JEFFERSON, GIPSON & APOLINOR, et al., who wish to continue with their Cross-Appeal. ILG; STH; WMT (all attorneys notified by copy (7)-)
Oct. 3	Filed Pltfs' NOTICE OF APPEAL—as to the Judgment of July 1, 1969 as amended August 14, 1969 and from the Court's Denial of Pltfs' Motion to further amend the Judgment so as to allow for retroactive payments dated Sept. 26, 1969.
Oct. 29	Mailed Supplemental Record to Supreme Court
	* * * *
Nov. 20	Filed RETURN ON DEPOSITION SUBPOENAS (2) both executed June 24, 1969 by serving Tom Day at Verdergriff's Chevrolet Co. and by serving John Clack at Vandergriff's Chevrolet Co. (MD-18641)
1970	
May 6	Filed OPINION from Supreme Court: "The motion for leave of proceed in forma pauperis granted. The judgment is vacated and the case is remanded back for further consideration (in light of Rasado vs. Wyman, 397 U.S. 397.)"
June 5	Filed certified copy of judgment from Supreme Court: Vacated and Remanded back to this court (case reopened)
	Filed certified copy of Order Granting Leave to proceed in Forma Pauperis. (from Supreme Court)

CIVIL DOCKET

DATE	PROCEEDINGS
1970	
July 6	Filed defts' MOTION FOR JUDGMENT
July 30	Filed PROPOSED JUDGMENT.
Aug. 4	Filed JUDGMENT vacating judgment entered 7-1-69 and thereafter amend 8-7-69 & entered 8-14-69. Defendants motion to dismiss Ruth Jefferson is overruled. The payments of less than 100% to AFDC is not violative to the Equal Protection Clause, the Civil Rights Act or Equal Protection clause of the 14th Amendment and is not the result of racial or ethnic discrimination. The Texas state wide plan E-434 is in conformity with the U.S. Supreme Court in Rosado, et al vs. Wyman, et al decided 4-6-70. The injunctive relief sought by plaintiffs is denied. ILG: STH: WMT.
	Copies mailed to Ed Polk, Dallas Legal Services and Pat Bailey, Asst. Attorney General, Austin, Texas.
Aug. 14	Filed Plaintiffs' MOTION TO AMEND JUDGMENT.
Sept. 15	Filed defts MEMORANDUM in opposition to plf's motion to amend judgment.
Sept. 25	Filed ORDER Overruling Motion to Amend Judgment ILG; STH; WMT.
Oct. 26	Filed Pltfs' NOTICE OF APPEAL from the Judgment of Aug. 4, 1970, and from the Court's denial of Pltf's Motion to Amend Judgment. (a copy of Notice to each of the 3 judges.)
Nov. 18	Mailed cases papers (7) to the SUPREME COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA 3-3012-B

RUTH J. JEFFERSON, EMMA GIPSON, and JOSE APOLINOR VASQUEZ, Individually, on Behalf of Their Minor Children and on Behalf of All Others Similarly Situated, PLAINTIFFS

vs.

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare; WILL BOND, Chairman of the State Board of Public Welfare; W. KENDALL BAKER, Vice Chairman of the State Board of Public Welfare; LOUIS SARAZAN, Secretary of the State Board of Public Welfare; ROSALIND GILES, Director of Field Staff, Dallas Regional Office of the State Department of Public Welfare; Individually and in Their Official Capacities, DEFENDANTS

COMPLAINT—Filed: Feb. 12, 1969

I

STATEMENT

1. This is an action for a declaratory judgment and for a temporary restraining order, and for preliminary and permanent injunctive relief under Title 42, U.S.C., Sections 1983 and 1988 to enforce within the State of Texas guarantees of the Fourteenth Amendment to the United States Constitution and of the Federal Social Security Act, Title 42, U.S.C. Section 301 *et seq.* and more particularly Section 601 *et seq.* The Plaintiffs seek to restrain Defendants from applying, enforcing, executing and implementing Article 3 of the Texas Constitution Section 51a. Title 20A, Article 695(c), Seeton 18 of the Public Welfare Act (of Texas) of 1941 V.A.T.S.,

as amended, and the statewide order of Burton G. Hackney, Commissioner of the State Department of Public Welfare, dated July 26, 1968, and more precisely identified as Executive Letter Number E-417, insofar as such provisions, statutes and statewide orders permit and necessitate the reduction of grants to recipients of Aid to Families with Dependent Children (A.F.D.C.) below grant levels existing on and prior to January 2, 1968, without regard to the needs of such recipients and increases in the costs of living, and insofar as such provisions, statutes and statewide orders reduce rather than increase grants to such recipients after July 1, 1969, regardless of the increase in costs of living since the standards and maximums for such grants were previously established, and insofar as such provisions, statutes and statewide orders require lower grants to such recipients than are provided to recipients of other public assistance programs established under the federal Social Security Act without regard to the equal or greater needs of recipients of Aid to Families with Dependent Children.

II.

JURISDICTION

Jurisdiction is based upon:

(a) The Fourteenth Amendment to the United States Constitution;

(b) Title 42 United States Code, Chap. VII, Section 301, *et seq.* and more particularly Section 601 *et seq.*;

(c) Title 28, United States Code, Section 1331, and the amount in controversy exceeds $10,000.00, exclusive of interest and costs;

(d) Title 28, United States Code, Section 1343(3) and (4), 2201, 2202, 2281 and 2284;

(e) Title 42, United States Code, Section 1983 and 1988.

III. (A),

PLAINTIFFS

1. (a) Plaintiff, RUTH JEFFERSON, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and has resided in Texas continuously since 1939. She is the mother and sole support of the Plaintiff children, to wit: TONY JEFFERSON, born May 29, 1956; EULA JEFFERSON, born May 3, 1957, ARTHUR P. JEFFERSON, born June 1, 1958; and YOLANDA JEFFERSON, born June 5, 1959; and JACQUELINE JEFFERSON, born July 20, 1960; all of whom live with her at her place of residence. Plaintiff RUTH JEFFERSON was divorced on December 2, 1967, from her husband and the father of the above named Plaintiff children. Although a court decree orders her ex-husband to pay child support, he is Fourteen Hundred and Ten Dollars ($1,410.00) in arrears and the last payment received by Plaintiff RUTH JEFFERSON for said Plaintiff children was May 6, 1968. Plaintiff RUTH JEFFERSON and her children have no income, resources, support or maintenance other than the One Hundred and Twenty-Three Dollars ($123.00) per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. Plaintiff JEFFERSON is a Negro.

(b) Plaintiff, EMMA GIPSON, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. She is the sole support for three minor children, to wit: JAMES E. GIPSON, born October 23, 1963; DONALD R. GIPSON, born April 3, 1965; and ANTHONY D. GIPSON, born February 23, 1967, all of whom live with her at her place of residence, EMMA GIPSON and her children have no income, resources, support or maintenance other than the One Hundred and Two Dollars ($102.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department. Plaintiff GIPSON is a Negro.

(c) Plaintiff JOSE APOLINOR VASQUEZ, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. He and his wife are the parents and sole support of the Plaintiff children, to wit: MARGIE VASQUEZ, born November 2, 1952; PAULINE VASQUEZ, born January 15, 1954; FRANCES VASQUEZ, born February 26, 1955; JOSEPHINE and PATRICIA VASQUEZ (twins), born August 22, 1956; MARIO VASQUEZ, born August 22, 1957; and APOLINOR and CARMEN VASQUEZ (twins), born September 1, 1958. Plaintiff JOSE APOLINOR VASQUEZ, is unemployed and too disabled to work due to a broken neck suffered in an automobile accident. His employment prior to the accident was that of a migrant farm worker. He has been unsuccessful in his attempts to collect social security disability benefits. His wife, though employed, is unable to work regularly because of her health, having suffered a heart attack in 1957, with continuing concomitant health problems to the present. Even when Mrs. Vasquez works full time her earnings are insufficient to pay the cost of food for the family. Except for the sporadic income of Mrs. Vasquez, Plaintiff JOSE APOLINOR VASQUEZ and his eight (8) children have no income, resources, support or maintenance other than the One Hundred and Thirteen Dollars ($113.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department. Plaintiff VASQUEZ is a Mexican-American.

2. The Plaintiffs bring this action on their own and their children's behalf, and on behalf of all other persons similarly situated pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of all persons receiving Aid to Families with Dependent Children (A.F.D.C.) grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas. The members of the class are so numerous as to make joinder of all members before this court impossible and impracticable. Common relief is sought against Defendants' action directed at the class as a whole. The

interest of the class will be adequately represented by the named Plaintiffs.

III.(B)

DEFENDANTS

1. Defendant, BURTON G. HACKNEY, is Commissioner of the State Department of Public Welfare. Pursuant to Vernon's Annotated Civil States, Article 695(c), Section 33 of the Texas Statutes, he has the right, power and duty to exercise any right, power and duty conferred on the State Department of Public Welfare unless such right, power or duty is specifically delegated to the duly appointed agents or employees of the Department. Under Article 695(c), Section 41 of the Texas Civil Statutes, the State Department shall administer aid to needy dependent children including the fixing of the amount of grants complained of herein. The State Department of Public Welfare consists of the State Board of Public Welfare, the Commissioner of Public Welfare, and their officers and employees. Vernon's Annotated Civil Statutes, Article 695(c), Section 21.

2. Defendant WILL BOND is Chairman of the State Board of Public Welfare, other members of the State Board are Defendants W. KENDALL BAKER, Vice-Chairman and LOUIS SARAZAN, Secretary. The Board is responsible for the adoption of all policies, rules and regulations for the government of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of. Vernon's Annotated Civil Statutes, Article 695(c), Section 32 of the State of Texas.

3. Defendant ROSALIND GILES is the Director of the Field Staff of the Dallas Regional Office of the State Department of Public Welfare. It is her responsibility under the statutes and regulations of the State Department of Public Welfare to implement the regulations of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of.

III. (C)

4. This suit requires the convening of a three-judge court in accordance with 28 U.S.C., Section 2281 and 2284, because Plaintiffs seek to enjoin the enforcement, operation and execution of a provision of the state constitution, a state statute, and of an order of statewide effect made by a state administrative board pursuant to said state constitution and said statute on the grounds of the unconstitutionality of such state constitutional provision, statute and administrative order.

IV.

STATEMENT OF CLAIM

1. Pursuant to the federal Social Security Act of 1935, as amended, Texas cooperates with and has filed a plan as required by said Act with the Department of Health, Education and Welfare of the Federal Government to grant assistance to needy blind persons (AB), to needy permanently and totally disabled persons (APTD), to needy old persons (OAA), and to needy families with dependent children (AFDC). Throughout the Federal Social Security Act, the statutory purpose that money will be allocated to such recipients entitled by law from aforesaid categories on the basis of need is made clear. As illustrative of this premise see Title 42 U.S.C., Section 302(a)(10)(A), ". . . (The State Plan shall) provide that the State agency shall, in determining need for such assistance . . ." See also 42 U.S.C., Section 602(a)(7), 1202(a)(8), and 1352(a)(8).

2. The major part of the monies paid in the form of grants to such needy persons are of federal origin, provided through the Department of Health, Education and Welfare. In return, the Social Security Act imposes a positive obligation upon the states cooperating under it to allocate welfare payments on the basis of need to all persons who are eligible under any one or more of the aforesaid categories of assistance.

3. In Texas, as in certain other states, substantially lower grants have been given, over a course of many

years, to A.F.D.C. recipients than have been given to recipients of other federally funded public assistance programs, despite the equal or greater need of the needy dependent children in the A.F.D.C. program. The particular devices used to effect this discrimination have been the "maximums" provided under state public welfare department statewide orders for A.F.D.C. recipients. For example, as of July 1, 1968, an A.F.D.C. mother with three (3) children could obtain only $114.00 per month in grant amount regardless of their need as calculated under standards set by the state public welfare department. An A.F.D.C. mother with twelve (12) children could obtain only $135.00 regardless of their need under such standards. In no other federally funded welfare program in Texas were such severe "maximums", totally unrelated to need, established.

4. Because of its concern with the A.F.D.C. program, including the excessively low standards of need and maxima in Texas certain other state A.F.D.C. programs, Congress in Section 213(b) of the 1967 amendments to the Social Security Act, signed into law on January 2, 1968, as P.L. 90-248 added a new requirement for state A.F.D.C. programs, Section 402(a)(23) (42 U.S.C. 602 (a)(23)), which provides that state A.F.D.C. plans must:

> provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the state imposes on the amount of aid paid to families will have been proportionately adjusted."

5. The purpose of requiring the increases in A.F.D.C. standards and grants "by July 1, 1969" rather than immediately was to allow time to study what the changes in cost of living have been and to allow for state legislatures to raise the extra appropriations needed to meet the state share of such increased grants.

6. Rather than so carry out the mandate of Congress, the Defendants, on the basis of the previously acted Texas constitutional provisions, statewide statute and

statewide administrative order, issued subsequent to the adoption by Congress of Section 402(a)(23) of the Act, have effected the opposite result. In violation of the Social Security Act, the Texas Constitution, Article 3, Section 51a, makes impossible any increased payments to be allocated to those A.F.D.C. recipients statutorily eligible on the basis of need and changes in the cost of living. Rather, such constitutional provision sets a maximum figure ($60,000,000) that may be appropriated by the State Legislature for welfare payments to be spent in a given year; Article 695(c) and 18 of the Texas Public Welfare Act further implements such provisions. The statewide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directs that from September 1, 1968, through August 31, 1969, all A.F.D.C. "maximums" shall be reduced by twelve dollars ($12.00), without regard to changes in the cost of living, standards of need or actual need, to wit: the maximum per month for a mother with one child is reduced from Seventy-Two Dollars to Sixty Dollars; for a mother with two children, from Ninety-Three Dollars to Eighty-One Dollars; for a mother with three children, from One Hundred and Fourteen Dollars to One Hundred and Two Dollars; for a mother with four or more children from One Hundred and Thirty-Five Dollars to One Hundred and Twenty Three Dollars.

7. That Plaintiffs and the members of their class have qualified under law as participants in such programs providing for benefits to families with dependent children. Their assistance has been cut in the following manner:

Plaintiff, RUTH JEFFERSON, mother of five (5) minor children, had her grant cut from One Hundred and Thirty Five Dollars ($135.00) to One Hundred and Twenty-Three Dollars ($123.00).

Plaintiff EMMA GIPSON, mother of three (3) minor children had her grant cut from One Hundred and Fourteen Dollars to One Hundred and Two Dollars ($114.00 to $102.00).

8. Beneficiaries receiving assistance under other programs provided for by law, such as aid to the needy

blind, aid to the permanently and totally disabled, aid to the aged, have not been so reduced as have been Plaintiffs.

9. That there is no legal, rational or reasonable basis for the discrimination between Plaintiffs, as beneficiaries of the Aid for Dependent Children program and beneficiaries of other programs referred to herein. That such unreasonable and arbitrary distinctions constitute a denial of equal protection of the law as required by the Fourteenth Amendment to the United States Constitution and cannot be justified in any reasonable manner.

10. That furthermore the reduction in assistance to families with dependent children is based on discrimination because of race in that families with dependent children in the State of Texas are in large part members of the Negro race or of Mexican-American origin, whereas beneficiaries under programs providing assistance to the blind, the permanently disabled, the aged are in substantial part members of the Caucasian race and of non-Mexican origin; that the arbitrary and unreasonable reduction in assistance, as referred to herein was so provided for as to discriminate against Plaintiffs and members of their class because of their race or ethnic origin and so constitutes a denial of equal protection of law as required by the Fourteenth Amendment.

11. That in addition, the reduction in assistance to the needy dependent children of the A.F.D.C. program, as distinguished from recipients of other programs, is further based upon invidious and arbitrary discriminations against them, as distinguished from other public assistance recipients, as a result of popular prejudice against children of unwed mothers. Said discrimination is made even though the A.F.D.C. program consists of both "legitimate" and "illegitimate" children. Such discrimination against "illegitimate" children and others constitutes a denial of the equal protection of law required by the Fourteenth Amendment.

12. That the fiscal year for the appropriations provided by the State of Texas for Public Assistance does not expire until August 31, 1969; that the State of Texas, already in violation of law as described above, will be

in further violation of law no later than July 1, 1969, unless the provisions of Article 3, Section 51a, of the Constitution of the State of Texas is declared in violation of Federal law, in violation of the plan filed by the State of Texas, required by law for it to receive federal funds for Public Assistance, and declared thereby inoperative and of no force and effect, and shall limit the right of the Legislature of the State of Texas to comply with the law, and appropriate sufficient funds of money so as not to deny a reasonable minimum standard of living for Plaintiffs and the members of their class.

13. Plaintiffs and members of their class believe, because of recent public statements by Defendants herein and by several elected state officials, that a further reduction in their A.F.D.C. grants is imminent and that that proposed reduction is justified by Defendants on the basis of Article 3 of the Texas Constitution, Section 51a, and Title 20A, Article 695(c), Section 18 of the Public Welfare Act (of Texas) of 1941, Vernon's Annotated Texas Statutes as amended; and that such reduction will be implemented by a statewide order of the Defendant, BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare, similar to Executive Letter No. E-417, issued July 26, 1968. Plaintiffs would show the Court that such a reduction of their A.F.D.C. grants by Defendants, if effected, will be unconstitutional, contrary to the terms and purposes of the United States Social Security Act and in violation of the Equal Protection clause of the Fourteenth Amendment. Plaintiffs would further show the Court that such proposed reduction would be in the amount of Twenty-Eight Dollars ($28.00) per month and that the threat of such a reduction represents immediate and irreparable harm to the Plaintiffs and that if effected they and members of their class represented by Plaintiffs and their minor children will die of hunger and malnutrition.

14. Plaintiffs and the members of their class will be further harmed and discriminated against in that in addition to receiving the aforesaid illegal reduction in assistance, they will not receive the increase required by federal law as referred to aforesaid.

V.

CAUSES OF ACTION

For A First Cause of Action: Plaintiffs allege that Article 3, Section 51a of the Constitution of the State of Texas denies Plaintiffs and all members of the class they represent equal protection of the law in that the members of the aforesaid class and Plaintiffs are arbitrarily and unreasonable discriminated against as compared with other beneficiaries of the programs of Public Assistance. That this discrimination is arbitrary and in violation of law and denies equal protection of the law as required by the United States Constitution.

For A Second Cause of Action: Plaintiffs allege that the arbitrary and unreasonable reduction and any further reductions in assistance to them and to the members of their class is and will be improperly based upon the fact that they are members of the Negro race or of Mexican-American origin and thus denied their equal protection of the laws as required by the United States Constitution.

For A Third Cause of Action: Plaintiffs allege that the unreasonable and arbitrary reduction and any further reduction of Public Assistance to Plaintiffs and to the members of their class unrelated to any reasonable or rational standard but solely based upon the illegal limitations set forth as a result of Article 3, Section 51a, as aforesaid constitutes a taking of property without due process of law as required by the Constitution of the United States, Fourteenth Amendment.

For A Fourth Cause of Action: Plaintiffs allege that the reduction and any future reduction by the State of Texas of the amounts of Public Assistance for Plaintiffs and the members of their class is in violation of the United States Social Security Act as amended and that the reduction of amounts accordingly was and will be illegal, arbitrary and otherwise improper.

For a Fifth Cause of Action: Plaintiffs allege that the provisions of Article 3, Section 51a of the Constitution of the State of Texas are contrary to the United States Social Security Act as amended, and the purposes

set forth therein are contrary to the provisions of the United States Constitution and that this Court should so declare that the provisions of Article 3, Section 51a, are inoperative and in no way limit the right of the Legislature of the State of Texas to appropriate sufficient sums of money to fulfill the requirements under law to Plaintiffs and to the members of their class, and that Texas restore the reductions made as described above, and carry out its obligations under Title 42 U.S.C., Section 402(a)(23).

PRAYER FOR RELIEF

Plaintiffs demand judgment against the Defendants:

1. That pursuant to the provisions of the United States Code, Title 28, Section 2281-2284, a three-judge court be convened forthwith as required therein to hear and determine the issues herein, since provisions of the Constitution of the State of Texas, Article 3, Section 51a, and Title 20A, Article 695(c), Section 18, Vernon's Annotated Texas Statutes, a statute enacted thereunder improperly restricts the Legislature of the State of Texas from appropriating and the Defendants from distributing sums for assistance to Plaintiffs and to members of their class in accordance with need as required by Federal and Texas Law.

2. That said Article 3, Section 51a, and said Title 20A, Article 695(c), Section 18, Vernon's Annotated Texas Statutes, be declared unconstitutional, contrary to the terms and purposes of the United States Social Security Act as amended and be declared as having no force and effect, and that the statewide administrative order, Executive Letter No. E-417, issued by BURTON G. HACKNEY, the Commissioner of the State Department of Public Welfare and Defendant herein on July 26, 1968, be declared null and void and contrary to the requirements of Section 402(a)(23) of the Social Security Act and the Equal Protection clause of the Fourteenth Amendment.

3. That Plaintiffs and all members of their class receive all sums of money denied them by the State of Texas from the date such amounts were illegally reduced,

and that Defendants be required to undertake to correct the errors made by them, their agents, representatives and employees within Thirty (30) days from the entry of judgment herein and remit to all persons whose assistance was reduced such amounts as will make such persons whole from the date of such reduction to the date of such remission together with interest at six per cent (6%).

4. That Defendants be temporarily restrained and preliminarily and permanently enjoined from further reducing A.F.D.C. (Aid for Families with Dependent Children) grants at any time in the future in violation of the Equal Protection Clause of the Fourteenth Amendment and contrary to the requirements of Section 402(a)(23) of the Social Security Act as amended.

5. That the Defendants, as of July 1, 1969, increase the amounts of public assistance as required by the United States Social Security Act, Section 402(a)(23).

6. That this Court retain jurisdiction of the subject matter of this complaint until all the requirements of this Court and of the judgment hereunder are satisfied.

7. That the Plaintiffs be allowed interest from the date of any reduction hereunder and the costs of this action together with necessary and proper fees for legal services given on behalf of said Plaintiffs, together with all necessary other relief as may be just, essential to carrying out the requirements of law, and proper.

Respectfully submitted,

/s/ Ed J. Polk
ED J. POLK

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Date: February 10, 1969

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., PLAINTIFFS

v.

BURTON G. HACKNEY, ET AL., DEFENDANTS

DEFENDANTS' ANSWER—Filed March 6, 1969

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, Burton G. Hackney, Commissioner of the Texas Department of Public Welfare, Will Bond, Chairman of the State Board of Public Welfare, W. Kendall Baker, Vice-Chairman of the State Board of Public Welfare, Louis Sarazan, Secretary of the State Board of Public Welfare, and Rosaline Giles, Director of Field Staff, Dallas Regional Office of the Texas Department of Public Welfare, represented herein by Crawford C. Martin, Attorney General of Texas, in reply to Plaintiffs' Complaint, file this their answer, and would respectfully show the Court as follows:

I.

Plaintiffs' Complaint fails to state a claim against the Defendants upon which relief can be granted.

II.

A. Defendants admit that this is an action for a declaratory judgment and for a temporary restraining order against the Defendants, but deny the remaining portions of Paragraph I of Plaintiffs' Complaint.

B. Defendants deny the allegations contained in Paragraph II of Plaintiffs' Complaint.

C. Defendants admit that the Plaintiff, Ruth Jefferson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and that the Plaintiff is a Negro, but Defendants deny that the Plaintiff, Ruth Jefferson, and her children have no income, resources, support or maintenance other than the $123.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. As to the remaining portion of Paragraph III(A), Subparagraph 1(a), the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

D. Defendants admit that the Plaintiff, Emma Gipson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and that the Plaintiff is a Negro, but Defendants deny that the Plaintiff, Emma Gipson, and her children have no income, resources, support or maintenance other than the $102.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. As to the remaining portion of Paragraph III(A), Subparagraph 1(b), the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

E. Defendants admit that the Plaintiff, Jose Apolinor Vasquez, is a resident of the City of Dallas, County of Dallas, State of Texas, and is a Mexican-American, but deny that the Plaintiff is a citizen of the United States and Texas, and except for the sporadic income of Mrs. Vasquez, the Plaintiff and his eight children have no income, resources, support or maintenance other than the $113.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department. As to the remaining portion of Paragraph III(A), Subparagraph 1(c), the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

F. Defendants admit that the Plaintiffs bring this action on their own and their children's behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure, and that the members of the class are so numerous as to make joinder of all members before this Court impossible and impracticable, and that common relief is sought against Defendants' actions directed at the class as a whole, and that there are common questions of law affecting persons receiving AFDC grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas. Defendants deny that there are common questions of fact affecting the rights of all persons receiving AFDC grants and that the interest of the class will be adequately represented by the named Plaintiffs.

G. Defendants admit all of the allegations contained in Paragraph III(B), Subparagraph 1, with the exception of the reference to the statutory provisions contained therein, and to such references to the statutory provisions the Defendants deny such allegations.

H. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 2, save and except the reference to the statutory provisions referred to therein, to which the Defendants deny.

I. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 3, save and except that the Defendants deny that Rosalind Giles has as her responsibility the fixing of AFDC grants.

J. Defendants deny the allegations contained in Paragraph III(C), Subparagraph 4 of Plaintiffs' Complaint.

K. Defendants admit the first sentence of Paragrapn IV, Subparagraph 1 of Plaintiffs' Complaint, but the Defendants deny the remainder thereof.

L. Defendants admit the first sentence of Paragraph IV, Subparagraph 2 of Plaintiffs' Complaint, but the Defendants deny the remainder thereof.

M. Defendants deny the allegations contained in Paragraph IV, Subparagraph 3 of Plaintiffs' Complaint.

N. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allega-

tions contained in Paragraph IV, Subparagraph 4 of Plaintiffs' Complaint.

O. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV, Subparagraph 5 of Plaintiffs' Complaint.

P. Defendants admit that Article III, Section 51-a of the Texas Constitution sets a maximum figure of $60,000,000.00 that may be appropriated by the State Legislature for welfare payments to be spent in a given year, and that Section 18 of Article 695c, Vernon's Civil Statutes, implements such provisions. The Defendants further admit that the State-wide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directs that from September 1, 1968 through August 31, 1969, all AFDC "maximums" shall be reduced by $12.00, but Defendants deny the remaining portion of Paragraph IV, Subparagraph 6 of Plaintiffs' Complaint.

Q. Defendants admit the allegations contained in Paragraph IV, Subparagraph 7 of Plaintiffs' Complaint, with the exception that the Defendants deny that the grants cut were the grants of the Plaintiffs, Ruth Jefferson and Emma Gipson.

R. Defendants admit the allegations contained in Paragraph IV, Subparagraph 8 of Plaintiffs' Complaint.

S. Defendants deny the allegations contained in Subparagraphs 9, 10, 11, 12, 13 and 14 of Paragraph IV of Plaintiffs' Complaint.

T. Defendants deny the allegations contained in Paragraph V of Plaintiffs' Complaint.

III.

The Defendants affirmatively allege that there is a valid reason for making smaller payments on a per capita basis to the recipients of AFDC welfare payments than to welfare programs concerning the aged, blind and disabled. The aged, blind and disabled are normally unable to supplement their grants by gainful employment, but many of the children who are recipients of AFDC assist-

ance can be, and are, gainfully employed. The aged, blind and disabled do not normally have someone legally responsible for their care and support, but many of the children in the AFDC Program do have individuals legally responsible for their care and support—i.e., fathers by way of child support payments. The aged, blind and disabled will normally always require welfare assistance because they will not become younger and unlikely will regain their sight or have their physical disability removed, but the recipients of the AFDC Program will hopefully someday be able to be gainfully employed and many of their parents are young and capable of gainful employment.

IV.

The Defendants affirmatively allege that pursuant to the provisions of Section 51 of Article III of the Constitution of Texas, the Legislature is prohibited from making any grant or authorizing the making of any grant of public moneys to any individual. That the present welfare assistance being given to the aged, blind, disabled and families with dependent children is only authorized pursuant to the express exception to Section 51 of Article III of the Constitution of Texas by Section 51-a of Article IN of the Constitution of Texas. That should Section 51-a of Article III of the Constitution of Texas be held unconstitutional or invalid, the Legislature of Texas would be prohibited pursuant to the provisions of Section 51 of Article III of the Constitution of Texas from making any grants of money to the aged, blind, disabled or families with dependent children.

That the voters of the State of Texas in enacting Section 51-a of Article III of the Constitution of Texas have placed a limit upon the amount of money authorized to be spent by the State of Texas for welfare assistance programs. That the voters of the State of Texas in the last general election refused to increase the constitutional authorization expanding the amount of moneys to be spent for welfare assistance to $75,000,000.00.

V.

That the provisions of Section 6 of Article VIII of the Constitution of Texas provide that no money shall be drawn from the Treasury but in pursuance of specific appropriation made by law. That should the specific appropriations made by the Legislature of Texas to the welfare programs dealing with the aged, blind, disabled and families with dependent children be declared unconstitutional or invalid, then there would be no appropriation for such programs and the Treasurer of the State of Texas would not be authorized in issuing warrants to individuals for benefits under the welfare programs for the aged, blind, disabled and families with dependent children.

WHEREFORE, PREMISES CONSIDERED, the Defendants pray that the relief sought by the Plaintiffs be in all things denied and that the temporary injunction heretofore entered be dissolved and set aside and that the Defendants go hence with their costs.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

HAWTHORNE PHILLIPS
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/s/ Pat Bailey
PAT BAILEY
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Attorneys for Defendants

[Caption Omitted]

AMENDED COMPLAINT—Filed April 8, 1969

I.

STATEMENT

1. This is an action for a declaratory judgment and for a temporary restraining order, and for preliminary and permanent injunctive relief under Title 42, U.S.C., Sections 1983 and 1988 to enforce within the State of Texas guarantees of the Fourteenth Amendment to the United States Constitution and of the Federal Security Act, Title 42, U.S.C., Sections 301 *et seq.*, and more particularly Section 601 *et seq.* The Plaintiffs seek to restrain Defendants from applying, enforcing, executing and implementing Article 3 of the Texas Constitution, Section 51a, Title 20A, Article 695(c), Section 18 of the Public Welfare Act (of Texas) of 1941 V.A.T.S., as amended, House Bill No. 5, 60th Legislature, First Session, and the statewide orders of Burton G. Hackney, Commissioner of State Department of Public Welfare dated July 26, 1968, and Feb. 28, 1969, more precisely identified as Executive Letters Numbers E-417, and E-430, respectively, insofar as such provisions, statutes and statewide orders permit and necessitate the reduction of grants to recipients of Aid to Families with Dependent Children (AFDC) below grant levels existing on and prior to January 2, 1968, without regard to the needs of such recipients and increases in the costs of living, and insofar as such provisions, statutes, and statewide orders reduce rather than increase grants to such recipients after July 1, 1969, regardless of the increase in costs of living since the standards and maximums for such grants were previously established, and insofar as such provisions, statutes, and statewide orders require lower grants to such recipients than are provided to recipients of other public assistance programs established under the Federal Social Security Act without regard to the equal or greater needs of recipients of Aid to Families with Dependent Children.

II.

JURISDICTION

Jurisdiction is based upon:

(a) The Fourteenth Amendment to the United States Constitution;

(b) Title 42, United States Code, Chap. VII, Section 301, *et seq.* and more particularly Section 601 *et seq.*;

(c) Title 28, United States Code, Section 1331 and the amount of controversy exceeds $10,000.00, exclusive of interest and costs;

(d) Title 28, United States Code, Section 1343(3) and (4), 2201, 2202, 2281 and 2284;

(e) Title 42, United States Code, Sections 1983, 1988 and 2000(d);

III (A)

PLAINTIFFS

1. Plaintiff, RUTH JEFFERSON, is an adult Negro citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and has resided in Texas continuously since 1939. She is the mother and sole support of the Plaintiff children, to wit: TONY JEFFERSON, born May 29, 1956; EULA JEFFERSON, born May 3, 1957, ARTHUR P. JEFFERSON, born June 1, 1958; and YOLANDA JEFFERSON, born June 5, 1959; and JACQUELINE JEFFERSON, born July 20, 1960, all of whom live with her at her place of residence. Plaintiff RUTH JEFFERSON was divorced on December 2, 1967, from her husband and the father of the above named Plaintiff children. Although a court decree orders her ex-husband to pay child support, he is Fourteen Hundred and Ten Dollars ($1,410.00) in arrears and the last payment received by Plaintiff RUTH JEFFERSON and said Plaintiff children was May 6, 1968. Plaintiff RUTH JEFFERSON and her children have no income, resources, support or maintenance other than the One Hundred and Twenty-Three Dollars ($123-.00) per month public assistance payments, and agri-

cultural commodities received from the Dallas County Welfare Department.

2. Plaintiff EMMA GIPSON, is an adult Negro citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. She is the sole support of three minor children, to wit: JAMES E. GIPSON, born October 23, 1963; DONALD R. GIPSON, born April 3, 1965 and ANTHONY D. GIPSON, born February 23, 1967, all of whom live with her at her place of residence. Plaintiff EMMA GIPSON was divorced in February of 1968, and receives *no* child support from her ex-husband. Plaintiff EMMA GIPSON and her minor children have no income, resources, support or maintenance other than the One Hundred and Two Dollars ($102-.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department.

3. Plaintiff, JOSE APOLINOR VASQUEZ, is an adult citizen of Mexican-American origin of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas. He and his wife are the parents and sole support of the Plaintiff children, to wit: MARGIE VASQUEZ, born November 2, 1952; PAULINE VASQUEZ, born January 15, 1954; FRANCES VASQUEZ, born February 26, 1955; JOSEPHINE and PATRICIA VASQUEZ (twins), born August 22, 1956; MARIO VASQUEZ, born August 22, 1957; and APOLINOR and CARMEN VASQUEZ (twins), born September 1, 1958. Plaintiff JOSE APOLINOR VASQUEZ, is unemployed and too disabled to work due to a broken neck suffered in an automobile accident. His employment prior to the accident was that of a migrant farm worker. He has been unsuccessful in his attempts to collect social security disability benefits. His wife, though employed, is unable to work regularly because of her health, having suffered a heart attack in 1957, with continuing concomitant health problems to the present. Even when Mrs. Vasquez works full time her earnings are insufficient to pay the cost of food for the family. Except for the sporadic income of Mrs. Vasquez, Plaintiff JOSE APOLINOR VASQUEZ and his eight (8) children

have no income, resources, support or maintenance other than the One Hundred and Thirteen Dollars ($113.00) a month public assistance payments and agricultural commodities received from the Dallas County Welfare Department.

4. The Plaintiffs being this action on their own and their children's behalf, and on behalf of all other persons similarly situated pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of all persons receiving Aid to Families with Dependent Children (AFDC) grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas. The members of the class are so numerous as to make joinder of all members before this Court impossible and impracticable. Common relief is sought against Defendants' action directed at the class as a whole. The interest of the class will be adequately represented by the named Plaintiffs.

III (B)

DEFENDANTS

1. Defendants, BURTON G. HACKNEY, is the Commissioner of the State Department of Public Welfare. Pursuant to Vernon's Annotated Civil Statutes, Article 695(c), Section 3(3) of the Texas Statutes, he has the right, power and duty to exercise any right, power and duty conferred on the State Department of Public Welfare unless such right, power or duty is specifically delegated to the duly appointed agent or employees of the Department. Under Article 695(c), Section 4(1) of the Texas Civil Statutes the State Department shall administer aid to needy dependent children including the fixing of the amount of grants complained of herein. The State Department of Public Welfare consists of the State Board of Public Welfare, the Commissioner of Public Welfare, and their officers and employees. Vernon's Annotated Civil Statutes, Article 695(c), Section 2(1).

2. Defendant WILL BOND is Chairman of the State Board of Public Welfare; other members of the State

Board are Defendants W. KENDALL BAKER, Vice-Chairman and LOUIS SARAZAN, Secretary. The Board is responsible for the adoption of all policies, rules and regulations for the government of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of. Vernon's Annotated Civil Statutes, Article 695(c), Section 3(2) of the State of Texas.

3. Defendant ROSALIND GILES is the Director of the Field Staff of the Dallas Regional Office of the State Department of Public Welfare. It is her responsibility under the statutes and regulations of the State Department of Public Welfare to implement the regulations of the State Department of Public Welfare, including the fixing of A.F.D.C. grants herein complained of.

III (C)

This suit requires the convening of a three-judge court in accordance with 28 U.S.C., Section 2281 and 2284, because Plaintiffs seek to enjoin the enforcement, operation and execution of a provision of the State constitution, a state statute, and orders of statewide effect made by a state administrative board pursuant to said state constitution and said statute on the grounds of the unconstitutionality of such state constitutional provision, statute and administrative orders.

IV.

STATEMENT OF CLAIM

1. Pursuant to the Federal Social Security Act of 1935, as amended, Texas cooperates with and has filed a plan as required by said Act with the Department of Health, Education and Welfare of the Federal Government to grant assistance to needy blind persons (AB), to needy permanently and totally disabled persons (APTD), to needy old persons (OAA), and to needy families with dependent children (AFDC). Throughout the Federal Social Security Act, the statutory purpose that money will be allocated to such recipients entitled by law from aforesaid categories on the basis of need is made clear. As illustrative of this premise see Title 42, U.S.C., Sec-

tion 302(a)(10)(A), ". . . (The State Plan Shall) provide that the State agency shall, in determining need for such assistance . . . ." See also 42 U.S.C., Section 602(a)(7), 1202(a)(8), and 1352(a)(8).

2. The major part of the monies paid in the form of grants to such needy persons are of federal origin, provided through the Department of Health, Education and Welfare. In return, the Social Security Act imposes a positive obligation upon the states cooperating under it to allocate welfare payments on the basis of need to all persons who are eligible under any one or more of the aforesaid categories of assistance. In Texas, Article III, Section 51(a) of the State Constitution sets a figure of $60,000,000.00 as the maximum amount that may be appropriated from state funds by the state legislature for payments in a given year. Article 695(c) of Vernon's Annotated Texas Statutes, as amended, establishes four welfare categories: OAA (aid to the needy aged); AFDC (aid to families with dependent children); AB (aid to the needy blind); and APTD (aid to the permanently and totally disabled). Section 18 of Article 695(c) provides for the payment of assistance to AFDC recipients within the limitations and provisions of the Constitution of Texas. Other sections make similar provisions for other welfare categories. Pursuant to Article III, Section 51a and Article 695(c), the Texas Legislature, in House Bill Number 5, 60th Legislature, First Session, appropriated for welfare categories during the fiscal year ending August 31, 1969, the following approximate amounts:

Aid to Families With Dependent Children (AFDC)	$ 6,150,000.00
Old Age Assistance (OAA)	$48,160,000.00
Aid to the Blind (AB)	$ 1,400,000.00
Aid to the Permanently and Totally Disabled (APTD)	$ 4,250,000.00

3. In Texas, as in certain other states, substantially lower grants have been given, over a course of many years, to AFDC recipients than have been given to recipients of other federally funded public assistance programs, despite

the equal or greater needs of the needy dependent children in AFDC programs. The particular devices used to effect this discrimination have been the "maximums" provided under state public welfare department statewide orders for AFDC recipients. For example, as of July 1, 1968, an AFDC mother of three (3) children could obtain only $114.00 per month in grant amount regardless of their needs as calculated under standards set by the state public welfare department. An AFDC mother with twelve (12) children could obtain only $135.00 per month regardless of their needs under such standards. In no other federally funded welfare program in Texas were such severe "maximums", totally unrelated to need, established.

4. Because of its concern with the AFDC program, including the excessively low standards of need and maxima in Texas and certain other state AFDC programs, Congress in Section 213(b) of the 1967 amendments to the Social Security Act, signed into law on January 2, 1968, as P.L. 90-248, added a new requirement for state AFDC programs, Section 402(a)(23) (42 U.S.C. 602(a)(23)), which provides that state AFDC plans must:

> provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the state imposes on the amount of aid paid to families will have been proportionately adjusted.

5. The purpose of requiring the increases in AFDC standards and grants "by July 1, 1969" rather than immediately was to allow time to study what the changes in cost of living have been and to allow for state legislatures to raise the extra appropriations needed to meet the state's share of such increased grants.

6. Rather than so carry out the mandate of Congress, Defendants subsequently issued and carried out a statewide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directing that from September 1, 1968, through August 31, 1969,

all AFDC "maximums" shall be reduced by twelve dollars ($12.00), without regard to changes in the cost of living, standards of need or actual need, to wit: the maximum per month for a mother with one child is reduced from Seventy-Two Dollars ($72.00) to Sixty Dollars ($60.00); for a mother with two children, from Ninety-Three Dollars ($93.00) to Eighty-One Dollars ($81.00); for a mother with three children, from One Hundred and Fourteen Dollars ($114.00) to One Hundred and Two Dollars ($102.00); for a mother with four or more children from One Hundred and Thirty-Five Dollars ($135-.00) to One Hundred and Twenty-Three Dollars ($123-.00). Executive Letter E-417 stated that the proposed cuts in AFDC maximums were made necessary by the fact that ". . . maximum assistance funds are limited by Constitutional provisions and the special session of the Legislature has no means of adjusting AFDC funds of $6,150,000.00, upward since the Constitutional limitation of $60,000,000.00 each state fiscal year for assistance programs had already been completely appropriated.

7. Plaintiffs and the members of their class have qualified under law as perticipants in such programs providing for benefits to families with dependent children. Under Executive Letter E-417, their assistance has been cut in the following manner:

Plaintiff RUTH JEFFERSON, mother of five (5) minor children, had her grant cut from One Hundred and Thirty-Five Dollars to One Hundred and Twenty-Three Dollars ($135.00 to $123.00).

Plaintiff EMMA GIPSON, mother of three (3) minor children had her grant cut from One Hundred and Fourteen Dollars ($114.00) to One Hundred and Two Dollars ($102.00) per month.

8. Beneficiaries receiving assistance under other programs provided for by law, such as aid to the needy blind, aid to the permanently and totally disabled, and aid to the aged have not been so reduced as have been Plaintiffs.

9. Defendants have now issued and have stated that they intend to implement a new statewide administrative order, dated February 28, 1969, and more precisely iden-

tified as Executive Letter E-430, directing that beginning May 1, 1969, standard budgetary allowances for AFDC recipients will be modified to take into account increases in the cost of living, that maximum grant limitation on A.F.D.C. grants will be removed and that A.F.D.C. grants will then be determined by computing the A.F.D.C. dependent group's standard budgetary need, determining the dependent group's "recognizable need" by multiplying the standard budgetary need by a percentage figure (50%), and then subtracting any income figure attributed to the A.F.D.C. dependent group.

10. Under the plan enunciated in Executive Letter E-430, the grant of Plaintiff RUTH JEFFERSON and her five (5) children will be reduced from One Hundred and Twenty Three Dollars ($123.00) per month to One Hundred and Nineteen Dollars and Fifty Cents ($119.50) per month.

The grant of Plaintiff EMMA GIPSON and her three (3) children will be reduced from One Hundred and Two Dollars ($102.00) per month to Ninety-One Dollars ($91.00) per month.

The grant of Plaintiff JOSE APOLINOR VASQUEZ and his eight (8) children will be reduced from One Hundred and Thirteen Dollars ($113.00) per month to approximately Seventy Five Dollars ($75.00) per month. The Texas State Department of Public Welfare has indicated that under the plan set out in Executive Letter E-430, only about 11,500 A.F.D.C. grants will be raised while 20,000 grants will be lowered and 2,200 denied or terminated.

11. Under the E-430 directive, the standard budgetary need schedules for other welfare categories, aid to the needy aged, the needy blind, and the needy permanently and totally disabled will be increased to reflect changes in cost of living, but previously established maximum grants in those categories will remain in effect and no grants will be lowered or terminated. Many such grants will be raised to reflect the increases in the schedule of standard budgetary needs.

12. The reduction in A.F.D.C. grants effected by E-417 and the further reduction which Defendants propose to

effect under E-430 clearly discriminate against Plaintiffs and others in their class as compared to recipients in the other three welfare categories. There is no legal, rational or reasonable basis for the discrimination between Plaintiffs, as beneficiaries of the Aid to Families with Dependent Children program and beneficiaries of other programs referred to herein. Such unreasonable and arbitrary distinctions constitute a denial of equal protection of the law as required by the Fourteenth Amendment to the United States Constitution and cannot be justified in any reasonable manner.

13. Furthermore, the reduction in assistance to families with dependent children effected under E-417 and the reduction proposal under E-430 are based on discrimination because of race in that families with dependent children in the State of Texas are in large part members of the Negro race or of Mexican-American origin, whereas beneficiaries under programs providing assistance to the blind, the permanently disabled and the aged are in substantial part members of the Caucasion race and of non-Mexican origin; that the arbitrary and unreasonable reduction in assistance, as referred to herein, was so effected as to discriminate against Plaintiffs and members of their class because of their race or ethnic origin and so constitutes a denial of equal protection of law as required by the Fourteenth Amendment.

14. In addition, the present and proposed reductions in assistance to the needy dependent children of the A.F.D.C. program, as distinguished from recipients of other programs, are further based upon indivious and arbitrary discriminations against them, as distinguished from other public assistance recipients as a result of popular prejudice against children of unwed mothers. Said discrimination is made even though the A.F.D.C. program consists of both "legitimate" and "illegitimate" children. Such discrimination against "illegitimate" children and other constitutes a denial of the equal protection of law as required by the Fourteenth Amendment.

15. The fiscal year for the appropriations provided by the State of Texas for Public Assistance does not expire until August 31, 1969; that the State of Texas, al-

ready in violation of law as described above, will be in further violation of law no later than July 1, 1969, unless grants to A.F.D.C. recipients are increased to reflect changes in cost of living since the last time A.F.D.C. maximum grants were established and so as not to deny a reasonable minimum standard of living for Plaintiffs and the members of their class.

V

CAUSES OF ACTION

For a First Cause of Action: Plaintiffs allege that present and proposed future reductions of A.F.D.C. grants, resulting from the limitation on State welfare funds contained in Article III, Section 51a of the Texas Constitution and Article 695(c) Section 18, V.A.T.S. and the appropriation of available funds among the four welfare categories under the House Bill No. 5, 60th Legislature, First Session, deny Plaintiffs and all members of the class they represent equal protection of the law guaranteed to them by the Fourteenth Amendment to the United States Constitution, in that the members of the aforesaid class and Plaintiffs are arbitrarily and unreasonably discriminated against as compared with other beneficiaries of the programs of public assistance.

For A Second Cause of Action: Plaintiffs allege that the arbitrary and unreasonable reduction and any further reductions in assistance to them and to the members of their class is and will be improperly based upon the fact that they are members of the Negro race or of Mexican-American origin or that many members of their class are families with illegitimate children and thus deny and will deny them equal protection of the law as required by the United States Constitution.

For A Third Cause of Action: Plaintiffs allege that present and proposed arbitrary and unreasonable reductions in assistance to them and to the members of their class are and will be based upon the fact that they are members of the Negro race or of Mexican-American origin, in violation of 42 United States Code, Section 2000 (d).

For A Fourth Cause of Action: Plaintiffs allege that the unreasonable and arbitrary reduction and any further reduction of public assistance to Plaintiffs and to the members of their class unrelated to any reasonable or rational standard but solely based upon the illegal limitations set forth as a result of Article III, Section 51a, Article 695(c) and House Bill No. 5 as aforesaid constitutes a taking of property without due process of law as required by the Constitution of the United States, Fourteenth Amendment.

For a Fifth Cause of Action: Plaintiffs allege that the reduction and any further reduction by the State of Texas of the amounts of public assistance for Plaintiffs and the members of their class, based upon the illegal limitations set out in Article III, Section 51(a) of the Texas Constitution and Article 695(c), section 18, V.A. T.S., is and will be in violation of the Social Security Act, as amended, and therefore, in violation of Article VI of the United States Constitution.

PRAYER FOR RELIEF

Plaintiffs demand judgment against the Defendants:

1. That pursuant to the provisions of the United States Code, Title 28, Sections 2283-2284, a three-judge court be convened forthwith as required therein to hear and determine the issues herein, since provisions of the Constitution of the State of Texas, Article III, Section 51a, Article 695(c), Section 18, Vernon's Annotated Texas Statutes, and House Bill No. 5, 60th Legislature, First Session, improperly restrict the Legislature of the State of Texas from appropriating and the Defendants from distributing sums for assistance to Plaintiffs and to members of their class in accordance with needs as required by Federal and Texas law.

2. That, to the extent that they illegally limit state welfare expenditures, said Article III, Section 51a, and said Title 20A, Article 695(c), Section 18, V.A.T.S., be declared unconstitutional, contrary to the terms and purposes of the United States Social Security Act as amended and be declared as having no force and effect.

3. That House Bill No. 5, 60th Legislature, First Session, appropriating welfare funds among the various welfare categories so as to work an invidious discrimination against Plaintiffs and others in their class, be declared unconstitutional, null and void and of no force and effect.

4. That the statewide administrative order, Executive Letter No. E-417, issued by Burton G. Hackney, the Commissioner of the Texas State Department of Public Welfare and Defendant herein on July 26, 1968, be declared null and void and contrary to the requirements of the Social Security Act, Section 402(a)(23) and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

5. That the statewide administrative order, Executive Letter No. E-430, issued by Burton G. Hackney, the Commissioner of the Texas State Department of Public Welfare and Defendant herein on February 28, 1969, be declared null and void and contrary to the requirements of Section 402(a)(23) of the Social Security Act and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, and that Defendants be preliminarily and permanently enjoined from implementing said order.

6. That Plaintiffs and all members of their class receive all sums of money denied them by the State of Texas from the date such amounts were illegally reduced, and that Defendants be required to undertake to correct the errors made by them, their agents, representatives and employees within thirty (30) days from the entry of judgment herein and remit to all persons whose assistance was reduced such amounts as will make such persons whole from the date of such reduction to the date of such remission together with interest at six per cent (6%).

7. That Defendants be temporarily restrained and preliminarily and permanently enjoined from further reducing A.F.D.C. grants at any time in the future in violation of the Equal Protection clause of the Fourteenth Amendment and contrary to the requirements of Section 402(a)(23) of the Social Security Act as amended.

8. That the Defendants, as of July 1, 1969, increase the amounts of public assistance as required by the United States Social Security Act, Section 402(a)(23).

9. That this Court retain jurisdiction of the subject matter of this complaint until all the requirements of this Court and of the judgment hereunder are satisfied.

10. That the Plaintiffs be allowed interest from the date of any reduction hereunder and the costs of this action together with necessary and proper fees for legal services given on behalf of said Plaintiffs, together with all necessary other relief as may be just, essential to carry out the requirements of law, and proper.

Respectfully submitted,

Ed J. Polk
Dallas Legal Services
Project
301 North Market
Dallas, Texas

Douglas Larson
Carl Rachlin
Edward Sparer

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., PLAINTIFFS

v.

BURTON G. HACKNEY, ET AL., DEFENDANTS

DEFENDANTS' AMENDED ANSWER—Filed April 21, 1969

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, Burton G. Hackney, Commissioner of the Texas Department of Public Welfare, Will Bond, Chairman of the State Board of Public Welfare, W. Kendall Baker, Vice-Chairman of the State Board of Public Welfare, Louis Sarazan, Secretary of the State Board of Public Welfare, and Rosalind Giles, Director of Field Staff, Dallas Regional Office of the Texas Department of Public Welfare, represented herein by Crawford C. Martin, Attorney General of Texas, in reply to Plaintiffs' Amended Complaint, file this their Amended Answer, and would respectfully show the Court as follows:

I.

Plaintiffs' Amended Complaint fails to state a claim against the Defendants upon which relief can be granted.

II.

A. Defendants admit that this is an action for a declaratory judgment and for a temporary restraining order against the Defendants, but deny the remaining portions of Paragraph I of Plaintiffs' Amended Complaint.

B. Defendants deny the allegations contained in Paragraph II of Plaintiffs' Amended Complaint.

C. Defendants admit that the Plaintiff, Ruth Jefferson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of

Texas, and that the Plaintiff is a Negro, as alleged in Paragraph III(A), Subparagraph 1 of Plaintiffs' Amended Complaint, but Defendants deny that the Plaintiff, Ruth Jefferson, and her children have no income, resources, support or maintenance other than the $123.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department as alleged in Paragraph III(A), Subparagraph 1 of Plaintiffs' Amended Complaint. As to the remaining portion of Paragraph III(A), Subparagraph 1, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

D. Defendants admit that the Plaintiff, Emma Gipson, is an adult citizen of the United States and Texas and a resident of the City of Dallas, County of Dallas, State of Texas, and that the Plaintiff is a Negro, as alleged in Paragraph III(A), Subparagraph 2 of Plaintiffs' Amended Complaint, but Defendants deny that the Plaintiff, Emma Gipson, and her children have no income, resources, support or maintenance other than the $102.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department as alleged in Paragraph III(A), Subparagraph 2 of Plaintiffs' Amended Complaint. As to the remaining portion of Paragraph III(A), Subparagraph 2, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

E. Defendants admit that the Plaintiff, Jose Apolinor Vasquez, is a resident of the City of Dallas, County of Dallas, State of Texas, and is a Mexican-American, as alleged in Paragraph III(A), Subparagraph 3 of Plaintiffs' Amended Complaint, but deny that the Plaintiff is a citizen of the United States and Texas, and except for the sporadic income of Mrs. Vasquez, the Plaintiff and his eight children have no income, resources, support or maintenance other than $113.00 per month public assistance payments, and agricultural commodities received from the Dallas County Welfare Department as alleged in Paragraph III(A), Subparagraph 3 of Plaintiffs' Amend-

ed Complaint. As to the remaining portion of Paragraph III(A), Subparagraph 3, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

F. Defendants admit that the Plaintiffs bring this action on their own and their children's behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23(a), 23(b)(2) of the Federal Rules of Civil Procedure, and that the members of the class are so numerous as to make joinder of all members before this Court impossible and impracticable, and that common relief is sought against Defendants' actions directed at the class as a whole, and that there are common questions of law affecting persons receiving AFDC grants from the Texas Department of Public Welfare in the County of Dallas and in the State of Texas as alleged in Paragraph III(A), Subparagraph 4 of Plaintiffs' Amended Complaint. Defendants deny that there are common questions of fact affecting the rights of all persons receiving AFDC grants and that the interest of the class will be adequately represented by the named Plaintiffs in Paragraph III(A), Subparagraph 4 of Plaintiffs' Amended Complaint.

G. Defendants admit all of the allegations contained in Paragraph III(B), Subparagraph 1 of Plaintiffs' Amended Complaint with the exception of the reference to the statutory provisions contained therein, and to such references to the statutory provisions the Defendants deny such allegations.

H. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 2 of Plaintiffs' Amended Complaint save and except the reference to the statutory provisions referred to therein, to which the Defendants deny.

I. Defendants admit the allegations contained in Paragraph III(B), Subparagraph 3 of Plaintiffs' Amended Complaint save and except that the Defendants deny that Rosalind Giles has as her responsibility the fixing of AFDC Grants.

J. Defendants deny the allegations contained in Paragraph III(C) of Plaintiffs' Amended Complaint.

K. Defendants admit the first sentence of Paragraph IV, Subparagraph 1 of Plaintiffs' Amended Complaint, but the Defendants deny the remainder thereof.

L. Defendants admit the first sentence of Paragraph IV, Subparagraph 1 of Plaintiffs' Amended Complaint, but the Defendants deny the allegations contained in the second sentence of Paragraph IV, Subparagraph 1 of Plaintiffs' Amended Complaint. Defendants admit that in Texas, Article III, Section 51-a of the Constitution of Texas sets a figure of $60,000,000.00 that may be appropriated from State funds by the Legislature of the State of Texas for welfare assistance grant payments in a given year, and that Article 695(c), Vernon's Civil Statutes, establishes four welfare categories: OAA (Aid to the Needy Aged); AFDC (Aid to Families with Dependent Children); AB (Aid to the Needy Blind); and APTD (Aid to the Permanently and Totally Disabled), and that Article 695(c) provides for the payment of assistance to AFDC recipients within the limitations and provisions of the Constitution and statutes of the State of Texas, and that other sections of Article 695(c), Vernon's Civil Statutes, make similar provisions for other welfare categories. Defendants further admit that the Texas Legislature, in House Bill 5, 60th Legislature, appropriated for welfare categories during the fiscal year ending August 31, 1969, the following amounts: AFDC—$6,150,000.00; AB—$1,400,000.00; APTD—$4,250,000.00; but the Defendants deny that the House Bill 5 referred to by the Plaintiffs was at the First Session or that the amount appropriated to the Old Age Assistance Program was the sum of $48,160,000.00 or that such amounts were "approximate" amounts, in Paragraph IV, Subparagraph 2.

M. Defendants deny the allegations contained in Paragraph IV, Subparagraph 3 of Plaintiffs' Amended Complaint.

N. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV, Subparagraph 4 of Plaintiffs' Amended Complaint.

O. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allega-

tions contained in Paragraph IV, Subparagraph 5 of Plaintiffs' Amended Complaint.

P. Defendants admit the last sentence of Paragraph IV, Subparagraph 6 of Plaintiffs' Amended Complaint, but Defendants deny the remaining portion of Paragraph IV, Subparagraph 6 of Plaintiffs' Amended Complaint.

Q. Defendants admit the allegations contained in Paragraph IV, Subparagraph 7 of the Plaintiffs' Amended Complaint, with the exception that the Defendants deny that the grants cut were the grants of the Plaintiffs, Ruth Jefferson and Emma Gipson.

R. Defendants admit the allegations contained in Paragraph IV, Subparagraph 8 of Plaintiffs' Amended Complaint.

S. Defendants admit that they have now issued and intend to implement a new statewide administrative order, dated February 28, 1969, and more precisely identified as Executive Letter E-430, directing that beginning May 1, 1969, standard budgetary allowances for all categories of welfare recipients will be modified to take into account increases in the cost of living and that maximum grant limitations on AFDC grants will be removed and that all welfare assistance grants will then be determined by computing the defendant groups' standard budgetary need, determining the dependent groups' "recognizable" need by multiplying the standard budgetary need by a percentage figure, but the Defendants deny that Executive Letter E-430 sets such percentage figure at fifty percent (50%), and the Defendants further deny the allegation contained in Paragraph IV, Subparagraph 9 of Plaintiffs' Amended Complaint, to the effect that ". . . and then subtracting any income figure attributed to the A.F.D.C. dependent groups."

T. Defendants admit the allegations contained in Paragraph IV, Subparagraph 10 of Plaintiffs' Amended Complaint with the exception that the grant to Ruth Jefferson and her five (5) children will be reduced to $120.00 rather than $119.50, and the reference to Executive Letter E-430 for the reason that the plan referred to is set out in Executive Letter E-430 and Executive Letter E-434.

U. Defendants deny the allegations contained in Paragraph IV, Subparagraphs 11, 12, 13, and [illegible] of Plaintiffs' Amended Complaint.

V. Defendants admit that the fiscal year for the appropriations provided by the State of Texas for public assistance does not expire until August 31, 1969, but deny the remaining portion of Paragraph IV, Subparagraph 15 of Plaintiffs' Amended Complaint.

W. Defendants deny the allegations contained in each Subparagraph of Paragraph V of Plaintiffs' Amended Complaint.

III.

The Defendants affirmatively allege that there is a valid reason for making smaller payments on a per capita basis to the recipients of AFDC welfare payments than to welfare programs concerning the aged, blind and disabled. The aged, blind and disabled are normally unable to supplement their grants by gainful employment, but many of the children who are recipients of AFDC assistance can be, and are, gainfully employed. The aged, blind and disabled do not normally have someone legally responsible for their care and support, but many of the children in the AFDC Program do have individuals legally responsible for their care and support—i.e., fathers by way of child support payments. The aged, blind and disabled will normally always require welfare assistance because they will not become younger and unlikely will regain their sight or have their physical disability removed, but the recipients of the AFDC Program will hopefully someday be able to be gainfully employed and many of their parents are young and capable of gainful employment.

IV.

The Defendants affirmatively allege that pursuant to the provisions of Section 51 of Article III of the Constitution of Texas, the Legislature is prohibited from making any grant or authorizing the making of any grant of public moneys to any individual. That the present welfare assistance being given to the aged, blind, disabled and

families with defendent children is only authorized pursuant to the express exception to Section 51 of Article III of the Constitution of Texas by Section 51-a of Article III of the Constitution of Texas. That should Section 51-a of Article III of the Constitution of Texas be held unconstitutional or invalid, the Legislature of Texas would be prohibited pursuant to the provisions of Section 51 of Article III of the Constitution of Texas from making any grants of money to the aged, blind, disabled or families with dependent children.

That the voters of the State of Texas in enacting Section 51-a of Article III of the Constitution of Texas have placed a limit upon the amount of money authorized to be spent by the State of Texas for welfare assistance programs. That the voters of the State of Texas in the last general election refused to increase the constitutional authorization expanding the amount of moneys to be spent for welfare assistance to $75,000,000.00.

V.

That the provisions of Section 6 of Article VIII of the Constitution of Texas provide that no money shall be drawn from the Treasury but in pursuance of specific appropriation made by law. That should the specific appropriations made by the Legislature of Texas to the welfare programs dealing with the aged, blind, disabled and families with defendent children be declared unconstitutional or invalid, then there would be no appropriation for such programs and the Treasurer of the State of Texas would not be authorized in issuing warrants to individuals for benefits under the welfare programs for the aged, blind, disabled and families with dependent children.

VI.

That the relief sought by the Plaintiffs would have the effect of requiring this Court to take over management of the fiscal affairs of the State of Texas by determining the amounts of appropriations to be made and the uses to which such funds are to be expended, and such result would be in clear contravention of the Eleventh Amendment of the Constitution of the United States.

WHEREFORE, PREMISES CONSIDERED, The Defendants pray that the relief sought by the Plaintiffs be in all things denied and that the Defendants go hence with their costs.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

HAWTHORNE PHILLIPS
Executive Assistant

/s/ Pat Bailey
PAT BAILEY
Assistant Attorney General

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Capitol Station
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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., Individually, On Behalf of Their Minor Children and On Behalf of All Others Similarly Situated, PLAINTIFFS,

v.

BURTON G. HACKNEY, ET AL., Individually and In Their Official Capacities, DEFENDANTS,

ANSWERS TO SUPPLEMENTAL WRITTEN INTERROGATORIES

NOW COME the Defendants in the above styled and numbered cause and herewith submit Defendants' Answers to Plaintiff's Request for Supplemental Written Interrogatories.

INTERROGATORY NO. 1. Attached are Exhibits showing the maximum grant and amount of reduction in payment by date for the past twenty (20) years for the four (4) categories:

Exhibit A represents Old Age Assistance; *Exhibit B*, Aid to the Permanently and Totally Disabled; *Exhibit C*, Aid to the Blind; and *Exhibit D*, Aid to Families with Dependent Children.

These Exhibits were made from the trends tables or reports maintained by the Fiscal Division of the State Department of Public Welfare. They show dates maximum grants were changed and dates reductions in payments were made in the respective categories. This represents the only compilation the Department has showing the changes in maximum grants and amounts in reductions of payments. The Executive Letters which were submitted as *Exhibit C* in Defendants' Answers to Plaintiffs' Original Written Interrogatories describe the changes and how the reductions were made.

Other "across the board" changes made at various times in special items could have affected the amounts of grants

"across the board" but not necessarily the maximums. These would have been reflected in the *Manual of Services* and/or the Executive Letters, but the Defendants have no compilation of these changes. Such information might possibly be assembled from the Executive Letters which have already been submitted to this Court.

INTERROGATORY NO. 2. Defendants' answer to INTERROGATORY NO. 1 supplies the information that is available to the Defendants' to answer INTERROGATORY NO. 2.

/s/ Burton G. Hackney
BURTON G. HACKNEY
Commissioner, State Department
of Public Welfare

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, Burton G. Hackney, Commissioner of the Department of Public Welfare, after first being duly sworn according to law, upon his oath states that he is the Commissioner of the Department of Public Welfare and states that the statements contained in the above and foregoing Answers to Supplemental Written Interrogatories are true and correct.

/s/ Burton G. Hackney
BURTON G. HACKNEY

Subscribed and sworn to before me this the 29th day of April, 1969.

/s/ Mrs. Opal Hunt
MRS. OPAL HUNT
Notary Public in and for
Travis County, Texas

EXHIBIT A

OLD AGE ASSISTANCE

Maximum Grant and Amount of Reduction in Payment by Date

Date		Amount	
From	To	Maximum Grant	Reduction in Payment
October 1948	March 1950	$ 50	None
April 1950	August 1950	50	$0.50 per recipient
September 1950	January 1952	50	$1.00 per recipient
February 1952	May 1952	50	$0.50 per recipient
June 1952	September 1952	50	$0.25 per recipient
October 1952	July 1955	55	None
August 1955		55	$1.00 per recipient
September 1955	September 1956	55	None
October 1956	November 1957	58	None
December 1957	September 1958	60	None
October 1958	February 1959	65	None
March 1959	September 1959	66	None
October 1959	November 1960	67	None
December 1960	August 1961	68	None
September 1961	April 1962	71	None
May 1962		72	None
June 1962	September 1962	73	None
October 1962	March 1963	82	None
April 1963	August 1965	83	None
September 1965	December 1965	95	None
January 1966	May 1966	97	None
June 1966	September 1967	100	None
October 1967	April 1968	104	None
May 1968	June 1968	106	None
July 1968		110	None

EXHIBIT B

AID TO THE PERMANENTLY AND TOTALLY DISABLED

Maximum Grand and Amount of Reduction in Payment by Date

Date			Amount
From	To	Maximum Grant	Reduction in Payment
September 1957	September 1958	$58	None
October 1958	February 1959	63	None
March 1959	September 1959	64	None
October 1959	September 1962	65	None
October 1962	December 1965	69	None
January 1966	September 1966	71	None
October 1966		72	None
November 1966	September 1967	74	None
October 1967	June 1968	79	None
July 1968		84	None

EXHIBIT C

AID TO THE NEEDY BLIND

Maximum Grant and Amount of Reduction in Payment by Date

Date		Amount	
From	To	Maximum Grant	Reduction in Payment
October 1948	March 1950	$50	None
April 1950	August 1950	50	$0.50 per recipient
September 1950	January 1952	50	$1.00 per recipient
February 1952	May 1952	50	$0.50 per recipient
June 1952	September 1952	50	$0.25 per recipient
October 1952	July 1955	55	None
August 1955		55	$3.00 per recipient
September 1955	September 1956	55	None
October 1956	November 1957	58	None
December 1957	September 1958	60	None
October 1958	February 1959	65	None
March 1959	September 1959	66	None
October 1959	November 1960	67	None
December 1960	August 1961	68	None
September 1961	April 1962	71	None
May 1962		72	None
June 1962	September 1962	80	None
October 1962	December 1965	90	None
January 1966	May 1966	92	None
June 1966	September 1966	95	None
October 1966		96	None

EXHIBIT D

AID TO FAMILIES WITH DEPENDENT CHILDREN

Maximum Grant and Amount of Reduction in Payment by Date

Date		Amount	
From	To	Maximum Family Grant	Reduction in Payment
November 1948	April 1949	$ 81	None
May 1949	June 1949	81	5 per cent per family
July 1949		81	7 per cent per family
August 1949		81	4 per cent per family
September 1949		81	9 per cent per family
October 1949	November 1949	81	6 per cent per family
December 1949		81	9 per cent per family
January 1950	April 1950	81	11 per cent per family
May 1950	July 1950	81	16 per cent per family
August 1950		81	14 per cent per family
September 1950	October 1950	81	16 per cent per family
November 1950	March 1951	72	None
April 1951	February 1952	81	None
March 1952	September 1952	85	None
October 1952	January 1954	96	None
February 1954	April 1954	96	$2.00 per child—Maximum reduction per family $8.00
May 1954	March 1955	96	$2.50 per child—Maximum reduction per family $10.00
April 1955	May 1955	96	$3.00 per child—Maximum reduction per family $12.00
June 1955	February 1956	96	$4.00 per child—Maximum reduction per family $16.00
March 1956	September 1956	96	$2.00 per child—Maximum reduction per family $8.00
October 1956	April 1958	96	None
May 1958	December 1958	96	$1.00 per child—Maximum reduction per family $4.00
January 1959	February 1960	96	None
March 1960	November 1960	99	None
December 1960	May 1964	107	None
June 1964	August 1965	115	None
September 1965	December 1965	130	None
January 1966	August 1968	135	None
September 1968		123	None

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
Civil Action No. CA-3-3012-B

RUTH J. JEFFERSON, ET AL., PLAINTIFFS

v.

BURTON G. HACKNEY, ET AL., DEFENDANTS

ORDER—May 2, 1969

On this the 2 day of April, 1969, came on for consideration the Motion of the Defendants pursuant to Rule 42(a), Federal Rules of Civil Procedure, for consolidation of Civil Action No. SA69CA76 in the United States District Court for the Western District of Texas, San Antonio Division, styled Maria T. Davila, et al vs. Burton G. Hackney, et al, with the instant proceeding, and the Court having considered the Motion of the Defendants is of the opinion that the same is well taken and should be granted;

It is accordingly ORDERED that Civil Action No. SA69CA76 in the United States District Court for the Western District of Texas, San Antonio Division, styled Maria T. Davila, et al vs. Burton G. Hackney, et al be and the same is hereby consolidated with the instant proceeding.

Dated this 2 day of May, 1969.

/s/ Sarah T. Hughes

[Caption Omitted]

STIPULATIONS OF FACT

Now comes the defendants by their attorneys, and the plaintiffs by their attorneys and prior to trial on this case agree and stipulate that the E-Letters of the State Department of Public Welfare (more specifically E-417, E-430 and E-434, as well as Forms 36, dated as follows, July, 1968, January, 1969, and May, 1969), along with the 1968 Annual Report of the State Department of Public Welfare, along with the requests for admissions in this case, and interrogatories and the respective answers thereto, and along with all depositions in this case (to which it is stipulated that the answers by the parties given in said depositions are the same as the answers said parties would have given if they testified in open court), all of which are filed herein, is hereby offered into evidence by plaintiffs and defendants for all purposes and is hereby stipulated as evidence in this case, and further the following stipulations are also made:

1.

That plaintiff, Maria T. Davila, is a resident of San Antonio, Bexar County, Texas; that she is the mother of three minor children and prior to May 1, 1969, was a recipient of Aid to Families With Dependent Children, and was receiving public assistance in the amount of $54.00 per month; that effective May 1, 1969, she was dropped from the public assistance rolls by the defendants herein as a result of the implementation of the plan as set forth in E-430 and E-434.

2.

That plaintiff, Jo Ann Gutierrez, is a resident of San Antonio, Bexar County, Texas; that she is the mother of four minor children and prior to May 1, 1969, was a recipient of Aid To Families With Dependent Children, and was receiving public assistance in the amount of $123.00 per month; that effective May 1, 1969, she had her public assistance reduced to $107.00 per month as a result of the implementation of the plan as set forth in E-430 and E-434.

3.

That plaintiff, Ruth Jefferson, is an adult Negro citizen of the United States and Texas, and a resident of the City of Dallas, Dallas County, Texas; that she is the mother and sole supporter of her five minor children who live with her at her place of residence; that she and her children have no regular income, resources, support or maintenance other than the $120.00 per month public assistance payments and agricultural commodities received from the United States Department of Agriculture, but does receive spasmodic assistance in the form of money from the Orleans Fund, and has worked on brief occasions.

4.

That plaintiff, Emma Gipson, is an adult Negro citizen of the United States and Texas, and a resident of the City of Dallas, Dallas County, Texas; that she is the mother and sole supporter of her three minor children who live with her at her place of residence; that she and her children have no regular income, resources, support or maintenance other than $102.00 per month public assistance payments and agricultural commodities received from the United States Department of Agriculture, but has worked somewhat regularly in the past.

5.

That plaintiff, Jose Apolinar Vasquez, is an adult Mexican-American non-citizen of the United States and Texas and is a resident of the City of Dallas, Dallas County, Texas; that he is the father and he and his wife are the sole supporters of their eight minor children who live with him at his place of residence.

5a.

Under Executive Letter E-417 Plaintiffs, Ruth Jefferson and Emma Gipson, mothers of five and three minor children respectively, have had their grants cut from $135.00 to $123.00 and from $114.00 to $102.00 respectively per month.

5b.

Under the plan enunciated in Executive Letter E-430, the grant of plaintiff, Ruth Jefferson, and her five children will be reduced from $123.00 per month to $120.00 per month.

The grant of plaintiff, Emma Gipson, and her three children will be reduced from $102.00 to $91.00 per month.

The grant of Jose Apolinar Vasquez and his eight children will be reduced from $113.00 per month to $89.00 per month.

6.

That defendant, Will Bond, is Chairman of the State Board of Public Welfare; that defendant W. Kendall Baker, is Vice-Chairman of the State Board of Public Welfare, and that defendant, Louis Sarazan, is Secretary of the State Board of Public Welfare; that the Board is responsible for the adoption of all policies, rules and regulations for the government of the State Department of Public Welfare, including the fixing of policy for Administration of A.F.D.C. grants herein complained of and are charged with the administration of welfare activities of the State as provided by Art. 695 (c) V.A.T.S.

7.

That defendant, Burton G. Hackney, is the Commissioner of the State Department of Public Welfare, and pursuant to Art. 695 (c) V.A.T.S., he has the statutory responsibility to discharge all administrative and executive functions for the State Department of Public Welfare, and that he has the right, power and duty to exercise any right, power and duty conferred on the State Department of Public Welfare unless such right, power and duty is specifically delegated to the duly appointed agent or employee of the Department; that under Art. 695 (c) V.A.T.S. he shall administer aid to needy dependent children including the fixing of the amount of grants complained of herein; that the State Department of Public Welfare consists of the State Board of Public Welfare, the Commissioner of Public Welfare, and their officers and employees.

8.

That defendant, Raymond Cheves, is the Regional Director of the San Antonio Regional Office of the State Department of Public Welfare and is responsible for enforcing the regulations of the State Department of Public Welfare and is the agent of the defendant, Burton G. Hackney, in the administration of the Aid To Families With Dependent Children program in the City of San Antonio, Bexar County, Texas; and that defendant, Rosalind Giles, is the Director of the Field Staff of the Dallas Regional Offices of the State Department of Public Welfare, and it is her responsibility under the statutes and regulations of the State Department of Public Welfare to implement the regulations of the State Department of Public Welfare.

9.

Pursuant to the Federal Social Security Act of 1935, as amended and Texas statutory and constitutional provisions, Texas cooperates with and has filed a plan as required by said Act with the Department of Health, Education and Welfare of the Federal Government to grant assistance to needy blind persons (AB), to needy permanently and totally disabled persons (APTD), to needy old persons (OAA), and to needy families with dependent children (AFDC); and that the major part of the moneys paid in the form of grants to needy persons within the State of Texas are of federal origin, provided through the Department of Health, Education, and Welfare.

10.

That in Texas Art. III, 51-a of the State Constitution sets a figure of $60,000,000.00 as the maximum amount that may be appropriated from state funds by the state legislature for payments in a given year; that Art. 695 (c) V.A.T.S. as amended, establishes four welfare categories; OAA (aid to the needy aged); AFDC (aid to families with dependent children); AB (aid to the blind); and APTD (aid to the permanently and totally disabled); that Art 695 (c) V.A.T.S. also provides for the payment of the assistance of AFDC recipients within the limita-

tions and provisions of the Constitution of Texas, other sections make similar provisions for other welfare categories, pursuant to Art. III, Section 51-a, and Art. 695 (c) V.A.T.S.; that the Texas Legislature, in House Bill Number 5, 60th Legislature, First Call Session, appropriated for welfare categories during the fiscal year ending August 31, 1968, the following amounts:

A.F.D.C.	$ 6,150,000.00
O.A.A.	$48,200,000.00
A.B.	$ 1,400,000.00
A.P.T.D.	$ 4,250,000.00

11.

That present constitutional provisions of the Texas Constitution, limit, by their terms, the amount of money that the Legislature of the State of Texas is authorized to appropriate for assistance grants to the OAA, AB, APTD and AFDC programs to $60,000,000.00.

12.

The Legislature of Texas has presently appropriated for fiscal year September 1, 1968 to August 31, 1969, the $60,000,000.00 authorized for assistance grants in the OAA, AB, APTD and AFDC programs in the following manner:

OAA	$48,200,000.00
AB	1,400,000.00
APTD	4,250,000.00
AFDC	6,150,000.00

13.

Congress in Section 213 (b) of the 1967 amendments to the Social Security Act, signed into law on January 2, 1968, as P. L. 90-248, added a new requirement for state AFDC programs, Section 402 (a) (23) (42 U.S.C. 602 (a) (23)), which provides that state AFDC plans must:

provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established and any maximums that the state imposes on the amount of aid paid to families will have been proportionately adjusted.

14.

Defendants issued and carried out a statewide administrative order, dated July 26, 1968, and more precisely identified as Executive Letter E-417, directing that effective September 1, 1968, all AFDC "maximum grants" shall be reduced by twelve dollars. The maximum per month for a mother with one child is reduced from $72.00 to $60.00; for a mother with two children, from $94.00 to $81.00; for a mother with three children from $114.00 to $102.00; for a mother with four or more children from $135.00 to $123.00.

15.

Executive Letter E-417 stated that the proposed cuts in AFDC maximums were made necessary by the fact that ". . . maximum assistance funds were limited by Constitutional provisions and the special session of the Legislature has no means of adjusting AFDC funds of $6,150,000.00, upward since the Constitutional limitation of $60,000,000.00 each state fiscal year for assistance programs had already been completely appropriated.

16.

Plaintiffs and the members of their class have qualified under law as participants in such programs providing for benefits to families with dependent children.

17.

See Stipulation 5a.

18.

Beneficiaries receiving assistance under other programs provided for by law, such as aid to the needy blind, aid

to the permanently and totally disabled, and aid to the aged were not reduced by the implementation of E-417 as were plaintiffs.

19.

No Stipulation.

20.

Defendants have now implemented a new statewide administrative order, dated February 28, 1969, and more precisely known as Executive Letter E-430, and Executive letter E-434, directing that beginning May 1, 1968, standard budgetary allowances for AFDC recipients will be modified to take into account increases in the cost of living, that maximum grant limitation of AFDC grants will be removed and that AFDC grants will then be determined by multiplying the AFDC dependent group's standard budgetary need (50% at this time which may be adjusted as funds permit) in order to determine the recipient's recognizable needs (as defined in Letter E-430), and then subtracting any adjusted income figure attributable to the AFDC dependent group. Adjusted income means the income remaining from earned income after subtracting the first $30 and ⅓ of the remainder, and further subtracting work related expenses and child care, plus all non-earned income without deduction.

21.

See 5b.

22.

No Stipulation.

23.

That at the present time, the percentage of "needs" being met as calculated by the defendants to be necessary for minimal survival requirements that the defendants meet in each program is set forth in the following table:

Program	%age of Needs Met
OAA	100%
APTD	95%
AB	95%
AFDC	50%

24.

That during the month of August, 1968, 91.8% of the Old Age Assistance recipients received 100% of their unmet budgetary needs, 69.7% of the Aid to the Blind recipients received 100% of their unmet budgetary needs, 72.4% of the Aid to the Permanently and Totally Disabled recipients received 100% of their unmet budgetary needs, and 43.5% of the Aid to Families with Dependent Children recipients received 100% of their unmet budgetary needs.

25.

That the following table is an accurate statement of Net Fund Expenditures for OAA, APTD, AB and AFDC in Texas by source of funds for the fiscal year ended August 31, 1968

Program	Total	Source		% from state
		Federal	State	
OAA	$167,529,066.54	$119,366,167.78	$48,162,898.76	29%
APTD	10,020,681.00	5,773,561.75	4,247,119.25	42%
AB	3,719,944.00	2,319,978.17	1,399,965.83	38%
AFDC	32,425,700.00	26,276,272.27	6,149,427.73	19%

26.

That the following table is an accurate statement of number of recipients by program in August, 1968:

Program	Number of Recipients
OAA	229,654 recipients
APTD	15,962 recipients
AB	4,154 recipients
AFDC	138,942 mother & children recipients

27.

That AFDC grant expenditures by the State of Texas are matched with federal money at a ratio of 1:3 (state to federal).

28.

That OAA, AB and APTD grant expenditures by the State of Texas are matched with federal money at a ratio of 1:2 (state to federal).

29.

That the matching fund formula applied by HEW is different in the AFDC program than the formulas applied to the OAA, AB and APTD programs.

The Department of Health, Education and Welfare allows the states to administer a common program for OAA, AB, and APTD, but does not allow this as to the AFDC program.

30.

On a national basis, Texas (for the year ended December 31, 1967) has the seventh highest per capita contribution to OAA ($4.88) and the third lowest per capita contribution to AFDC ($.60) while the national average per capita contribution to OAA is $3.10 and to AFDC is $5.10; that Texas ranks 24th in per capita contributions ($.10) to AB and last in per capita contributions to APTD ($.22); while the national average per capita contribution to AB is $.19 and to APTD is $1.28.

31.

That according to figures provided by the State Department of Public Welfare, the following table is an accurate statement of the racial and ethnic characteristics of recipients, by category, as of March 1, 1969:

Program	White-Anglo	Black & Mexican-American	Black	Mex-American
AFDC	15.4%	84.6%	44.6%	40.0%
OAA	62.5%	37.5%	22.0%	15.5%
APTD	56.6%	43.4%	26.9%	16.5%
AB	44.3%	54.2%	35.2%	19.0%

33.

That according to figures provided by the State Department of Public Welfare, the following table is an accurate statement of the racial and ethnic characteristics of recipients, by category, for a period beginning September 1, 1967, and ending March 31, 1969.

Program	Year	% of Negroes & Mex-Americans	% of White-Anglos
OAA	1969	39.8	60.2
	1968	38.7	61.3
	1967	37.0	63.0
APTD	1969	46.9	53.1
	1968	45.6	54.4
	1967	46.2	53.8
AB	1969	54.2	44.3
	1968	54.9	45.1
	1967	54.7	45.3
AFDC	1969	87.0	13.0
	1968	84.9	15.1
	1967	86.0	14.0

32.
(out of sequence)

That families with dependent children who are in the State of Texas are in large part members of the Negro race or are of Mexican-American origin; whereas, beneficiaries under programs providing assistance to the aged are in substantial part of the Caucasian race and are of non-Mexican origin.

34.

No person, either White-Anglo, Negro or Mexican-American, in that class of people receiving assistance grants under the OAA, AB or APTD programs operated by the State of Texas have been made a party to this proceeding.

35.

Since 1967 there has been an increase in the percentage of Negroes and Mexican-Americans receiving benefits in the OAA, AB, APTD and AFDC programs in Texas.

36.

Since 1967 there has been a decrease in the percentage of White-Anglos receiving benefits in the OAA, AB, APTD and AFDC programs in Texas.

37.

The new budgetary system of the Texas Department of Public Welfare, effective May 1, 1969, resulted in approximately 22,812 AFDC families (eligible as of April 1, 1969) having their assistance grants reduced; 2,470 AFDC families (eligible as of April 1, 1969) having their assistance grants terminated; 14,000 AFDC families (eligible as of April 1, 1969) having their assistance grants raised or remaining the same.

38.

That the majority of the AFDC families having their assistance grant raised on May 1, 1969, were large families.

39.

The large family groups receiving AFDC assistance grants are predominately Negro and Mexican-American.

39a.

The majority of all family groups receiving AFDC, both large and small, are predominantly Negro and Mexican-American.

40.

That the estimated population 65 years old and over in the State of Texas, July 1, 1967, was 904,000 persons, of which 25.1% were receiving Old Age Assistance.

41.

That the estimated population under eighteen years of age in the State of Texas July 1, 1967, was 4,101,000 persons, of which 2.3% were receiving Aid to Families with Dependent Children.

42.

There are approximately 8 times the number of family units in the OAA program in Texas as in the AFDC. That more than five (5) times the total amount (federal and state funds) are spent on the recipients in the OAA, AB and APTD categories as is spent on the recipients in the AFDC category, although the former number twice the latter. (Each recipient in OAA is not necessarily a family unit. It is possible for a husband and wife in the same family to independently qualify for OAA whereby each is a recipient.)

43.

That within the past three years "maximum grants" (dollar limitation) have been increased three times in OAA while grant maximums have been reduced once in the last year in AFDC and were removed on May 1, 1969 in AFDC only; however, separate percentage control figures were established for the various categories as described in Stipulation #23.

44.

That the following table accurately states, for all four categories, the reductions in maximum grants from 1955 through mid-1969:

Program	Number of Times the Maximum Grant was Reduced
OAA	Once—in 1955
APTD	None (information dates from 1957 only)
AB	Once—in 1955
AFDC	Five times

45.

That the following chart is an accurate statement of budget requests and appropriations for the years 1964 through 1971:

1964	Requested	Appropriated	Expended	Balance
OAA	$41,700,000	$41,700,000	$41,700,000	$-0- **
APTD	1,500,000	1,683,000	1,583,000	-0- **
AFDC	3,900,000	3,900,000	3,900,000	-0- **
AB	1,400,000	1,400,000	1,400,000	-0- **
1965				
OAA	$41,700,000	$41,700,000	$41,700,000	$-0- **
APTD	1,500,000	1,690,000	1,690,000	-0- **
AFDC	3,900,000	3,900,000	3,900,000	-0- **
AB	1,400,000	1,400,000	1,400,000	-0- **
1966				
OAA	$41,700,000	$41,700,000	$41,700,000	-0- **
APTD	1,690,000	3,250,000	2,385,198	864,802
AFDC	3,900,000	5,650,000	5,465,505	184,495
AB	1,400,000	1,400,000	1,270,416	129,584
1967				
OAA	$41,700,000	$41,700,000	$41,700,000	-0- **
APTD	1,690,000	3,250,000	3,250,000	-0- **
AFDC	3,900,000	5,650,000	5,650,000	-0- **
AB	1,400,000	1,400,000	1,386,666	13,334
1968				
OAA	$47,200,000	$48,200,000	$48,162,898	37,101
APTD	4,250,000	4,250,000	4,247,119.25	2,881
AFDC	7,150,000	6,150,000	6,149,427.73	572
AB	1,400,000	1,400,000	1,399,965.83	34

** There was a small balance remaining at the end of the fiscal year.

1969	Requested	Appropriated
OAA	$48,200,000	$48,200,000
APTD	4,250,000	4,250,000
AFDC	6,150,000	6,150,000
AB	1,400,000	1,400,000
1970*		
OAA	$48,200,000	$48,200,000
APTD	4,250,000	4,250,000
AFDC	6,150,000	6,150,000
AB	1,400,000	1,400,000
1971*		
OAA	$48,200,000	$48,200,000
APTD	4,250,000	4,250,000
AFDC	6,150,000	6,150,000
AB	1,400,000	1,400,000

* These amounts requested by the State Department of Public Welfare and appropriated by 61st Texas Legislature conditioned on the Constitutional Amendment not passing.

46.

That the fiscal year for the appropriations provided by the State of Texas for public assistance will not expire until August 31, 1969.

48.

That since 1943 there have been six (6) increases in the amount of money appropriated to the OAA program by the Legislature of the State of Texas.

47.
(out of sequence)

That since 1943, there have been no reductions in the amount of money appropriated to the OAA, AB or AFDC programs by the Legislature of the State of Texas.

49.

That since 1943 there have been five (5) increases in the amount of money appropriated to the AB and AFDC programs.

50.

That since 1959 there have been two (2) increases in the amount of money appropriated to the AFDC program by the Legislature of the State of Texas.

51.

That since 1943 the monetary appropriations by the Legislature of the State of Texas to the OAA, AB and AFDC programs have increased the monetary expenditures in such programs by the following percentages:

OAA	—	211%
AB	—	200%
AFDC	—	410%

51a.

That since 1944 the number of persons receiving public assistance grants from the state of Texas in the OAA and AFDC programs has increased by the following percentages:

OAA	—	33.5%
AFDC	—	310.3%

Since 1954 the number of persons receiving public assistance grants from the state of Texas in the OAA and AFDC programs has increased by the following percentages:

OAA	—	2.5%
AFDC	—	68.3%

52.

In the past 26 years the appropriations by the Legislature of the State of Texas have been increasing in the

AFDC program at approximately twice the rate as in the OAA and AB programs.

53.

Since 1963 the monetary appropriations by the Legislature of the State of Texas to the OAA, AB, AFDC and APTD programs have increased the monetary expenditures in such programs by the following percentages:

OAA	—	13%
AB	—	0%
AFDC	—	58%
APTD	—	183%

53a.

That since 1964 the number of persons receiving public assistance grants from the State of Texas in the OAA and AFDC programs has increased by the following percentages:

OAA	—	.024%
AFDC	—	62.7 %

54.

That the Legislature of the State of Texas has never reduced the amount of money appropriated to the OAA, AB, AFDC or APTD programs.

55.

That the Legislature of the State of Texas has always appropriated an amount equal to or in excess of that appropriated by the previous Legislature to the OAA, AB, AFDC and APTD programs.

56.

That under Art. III, Sec. 51-a of the Texas Constitution, any increase in the amount of money presently being appropriated by the Legislature of the State of Texas to the AFDC program would result in the amount of

money available in the OAA, AB and APTD programs being reduced.

57.

That the large majority of recipients in OAA, APTD, and AB get the full "unmet" needs met by welfare grants within the maximums for those programs as reflected by the following table:

Program	%age of "unmet Needs" Met Within Adult Maximums
OAA	91.8% of all recipients
APTD	74.4%
AB	72.4%

58.

That in August 1968, only 43.6% of AFDC recipients had their full "unmet" needs met by their welfare grants.

That in September, 1968, only AFDC maximum grants were reduced by $12 across the board, resulting in a further reduction of the 43.6% of AFDC recipients whose full "unmet need" was being met by their welfare grants in August, 1968.

59.

That under defendants' 50% reduction plan for AFDC, it is now impossible for any AFDC recipient to have more than half of his unmet budgetary needs by the welfare grant.

60.

That the following table accurately states the overall effect on AFDC checks of the defendants' Fifty Percent System as set out in Administrative Orders E-430 and E-434.

Effect of 50% System	Number of Families
Checks reduced	22,812
Checks increased or remaining the same	Approximately 14,000
Grants entirely eliminated	2,470

Source: Defendant Hackney's Deposition, p. 126.

61.

That defendants have calculated that "needs" standards have risen 11% in AFDC since they were last set, and they have raised "needs" standards for all programs, but in the adult programs by less than 11%.

62.

That the majority of AFDC recipients as of May 1, 1969, receive a smaller grant than they did on January 2, 1968.

63.

That the need requirements as recognized by the State Department of Public Welfare in its budgetary procedures as contained in E-430 and E-434 which consists of subsistence needs (eg. food, clothing, rent, utility, drugs, etc.) which the State Department of Public Welfare recognizes as items necessary to maintain a minimum standard of health and decency are identical for the four types of categorical assistance, (Aid To Families With Dependent Children, Aid To The Blind, Aid To The Permanently And Totally Disabled, and Old Age Assistance).

64.

That prior to February 1, 1969, "in the AFDC program, a mother who is able to work and refuses a job offer without good cause, loses her welfare benefits, as will an older child who is not in school."

65.

That "the earnings of children under fourteen in the AFDC are so negligible that the United States Department of Health, Education and Welfare has directed the States to make no inquiry whatsoever into such earnings."

66.

That "outside income", i.e., income the recipient receives from sources other than State Welfare, are subtracted from the calculated state standard of need, before

the recipients actual welfare grant is determined; that in AFDC the recipients state standard of need, once determined is then divided in half and then the non-exempt "outside income" is subtracted in determining the recipients actual welfare grant.

67.

That any known support actually received from an absent father or other legally liable relative of a recipient child is automatically subtracted from the State's standard of need before an AFDC grant is determined.

68.

The 50% reduction factor applied to the AFDC program; the 95% reduction factor applied to the AB program; the 95% reduction factor applied to the APTD program were necessary if the Texas State Department of Public Welfare was to operate the AFDC, AB and AP TD programs within those appropriation limits for each category as set by the Legislature for the fiscal year ending August 31, 1969.

69.

The plan initiated by the Texas Department of Public Welfare, effective May 1, 1969, pursuant to Executive Letter 430, had as its primary purpose the establishment of a simplified budgeting procedure.

70.

The percentage control factor or percentage reduction factor set forth in Executive Letter 434 was necessary for the Texas Department of Public Welfare to operate the AB, AFDC and APTD programs within the amount of money appropriated for each category by the Legislature of the State of Texas for the fiscal year ending August 31, 1969.

71.

An alternative considered by defendants by Executive Letter 434 would have been an across-the-board cut of AFDC assistance grants by approximately $28.00.

72.

That during the month of January, 1969, the State Legislature, at the request of the defendant, Burton G. Hackney, authorized transfer of approximately $350,000 from funds appropriated from other assistance categories to the Aid To Families With Dependent Children category.

73.

The actual amount expended by the Texas Department of Public Welfare for assistance grants in the AFDC program for the State fiscal year September 1, 1968, to August 31, 1969, will be approximately $6,500,000.00.

74.

Since September of 1967 the number of recipients receiving AFDC assistance grants in Texas has increased at the rate of approximately 3,000 per month.

75.

Under present plans, if the constitutional amendment to be submitted to the voters of the State of Texas in August of 1969 which would authorize the Legislature to appropriate up to $80,000,000.00 for assistance grants in the OAA, AB, APTD and AFDC programs, is adopted, the appropriation for operation of the AFDC program commencing September 1, 1969, will be increased by an additional $11,900,000.00 making a total of $18,000,000.00, and AFDC recipients could then be paid 100% of recognized need.

76.

Pursuant to the proposed appropriation, the AFDC program would receive $11,900,000.00 of the $15,000,000.00 in additional funds available to operate the OAA, AB, APTD and AFDC program.

77.

32.5% of the AFDC family units have mothers with earned income and 15.1% of the AFDC family units re-

ceive contributions from the father. Of all OAA recipients (in May, 1968), 54.7% were receiving Social Security payments. These OAA recipients received an average grant of $57.98, the major part of their standard of need as calculated by Texas.

78.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 138,942 people in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

79.

That if the relief sought by the plaintiff is granted it could result in the assistance grants of approximately 249,760 people in the OAA, AB and APTD program being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

80.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 117,933 Negro and Mexican-Americans in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

80a.

That plaintiffs also request relief from the State's Constitutional and Statutory restrictions on appropriations to all of the categories.

81.

That if the relief sought by the plaintiff is granted it could result in the assistance grants of approximately

95,360 Negro and Mexican-Americans in the OAA, AB and APTD programs being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

81a.

Same Stipulation as 80a.

82.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 61,968 Negroes in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

82a.

Same Stipulation as 80a.

83.

That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 56,107 Negroes in the OAA, AB and APTD programs being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated.

83a.

Same Stipulation as 80a.

84.

Omitted.

85.

That the basic principle of all the public assistance programs is that of relieving individual unmet need which is determined by subtracting available income from the state-determined "standard of need."

86.

That approximately one child in four receiving AFDC is illegitimate.

87.

That the fathers of approximately one-fourth of the children receiving AFDC are incapacitated, in prison, or dead.

88.

No Stipulation.

89.

No Stipulation.

90.

That about ½ of the caretakers are too uneducated or handicapped to hold even the lowest-paying jobs.

91.

No Stipulation.

92.

That if the August Amendment which will raise the welfare ceiling fails to pass, AFDC grants could drop to $6.25 per month per child by the end of the next biennium dependent upon the continuous increase in the rolls.

93.

No Stipulation.

94.

That approximately 86% of the welfare expenditures for public assistance from State and Federal funds in Texas for the fiscal year ending August 31, 1968, including medical assistance, go to OAA, AB and APTD.

95.

That approximately 10% of the present state expenditures for public assistance excluding medical assistance, go to the AFDC program. This 10% goes to children who are too young to work but need help in growing up.

These children need help through education and a more wholesome environment, so they will have a better chance of reaching adulthood with the preparation to become productive citizens.

96.

That AFDC children need public assistance because they have been deprived of parental support by the death, or absence, or incapacity of a parent.

97.

That proper food and education are vital for children receiving AFDC. The younger the child receiving AFDC the more it would benefit from the help the state can provide through AFDC.

98.

That when a child receiving assistance reaches school age much of what the State Welfare Department can offer comes too late. Children receiving State Welfare grants need state help as toddlers through proper nutrition and environment so they will be ready for school when they get there.

That Joinder of all members of the class of persons receiving maximum grants February 12, 1969, before this Court is impracticable.

100.

That the Joinder of all persons who receive AFDC before the Court is impracticable.

84. (out of numerical sequence)

That the following three examples comparing benefits under AFDC and under the OAA program are accurate Public Assistance budgets under the hypothetical given:

Example #A

Old Plan (prior to May 1, 1969)

This chart illustrates the allowable needs and payable benefits as computed by the State Department of Public

Welfare prior to May 1, 1969, as applied to an OAA recipient with one dependent minor child and as applied to an AFDC recipient with one dependent minor childs. It is assumed in this example that both the OAA recipient and the AFDC recipient have $50.00 per month outside income, the OAA recipient receiving $50.00 per month from Social Security and the AFDC recipient receiving $50.00 from child support.

	OAA	AFDC	
Adult's Personal Needs	$ 45.00	$ 45.00	
Child's Personal Needs	21.00	21.00	
Housing	38.00	38.00	
Special Needs	15.50	2.00	
TOTAL ALLOWABLE NEEDS	$119.50	$106.00	
Outside Income (Social Security deducted with $5.00 credit)	(45.00)	(50.00)	(Child Support Deducted)
TOTAL PAYABLE	$ 74.00	$ 56.00	

Benefits

Example #B

New Plan (after May 1, 1969)

This chart illustrates the allowable needs and payable benefits as computed by the State Department of Public Welfare after May 1, 1969, as applied to an OAA recipient with one dependent minor child and as applied to an AFDC recipient with one dependent minor child. It is assumed in this example that both the OAA recipient and the AFDC recipient each has $50.00 per month outside income, the OAA recipient receiving $50.00 per month from Social Sceurity and the AFDC recipient receiving $50.00 per month from child support.

	OAA	AFDC	
Adult's Personal Needs	$ 65.00	$ 65.00	
Child's (or Children's) Personal Needs	25.00	75.00	
Housing	42.00	42.00	
TOTAL ALLOWABLE NEEDS	$132.00	$182.00	
50% reduction Applicable to AFDC only		91.00	
	$132.00	$ 91.00	
Outside Income Social Security deducted with $5.00 credit	(45.00)	(50.00)	(Child Support Deducted)
TOTAL PAYABLE Benefits	$87.00	$ 41.00	

That "there are people who qualify for Aged or Blind or Disabled assistance who are employed, just as there are some mothers and children in the AFDC program who are employed. A majority in all programs are unemployed. Thirty-two and one-half percent of the AFDC mothers in Texas have earned income, while 2.8% of OAA, 8.6% of AB and 3.36% of APTD have earned income because of 'physical and mental reason' or because 'there is no work available, they have no marketable skills or they are needed in the home.' "

STATE DEPARTMENT OF PUBLIC WELFARE

OFFICE MEMORANDUM

July 26, 1968

To: All Field Staff

FROM: Burton G. Hackney
Commissioner
State Office

E-417

SUBJECT: Lowering of AFDC Maximums Effective September 1, 1968

At the Regional Directors' and Supervisors' meeting held in Austin the week of July 15 we discussed some of the problems which have arisen due to the shortage of AFDC funds created by increases in the AFDC rolls, which will be further increased by the recent ruling of the United States Supreme Court in the case of King vs. Smith. (A separate E-Letter containing the specifics of this decision and the change in the stable relationship policy will be released when final clearance is received from HEW.)

The AFDC rolls in Texas have been increasing over the last number of months at a level of about 3,000 children per month. The Department has been able to handle this increase within the appropriated amounts, but it is anticipated that the rolls will further increase another 15 to 25% as a direct result of the Supreme Court ruling on the "man-in-the-home" policy. In addition, there is another suit pending on the residence requirement and there is a possibility that we may have to pay retroactive payments on certain residence cases.

In the meeting, I advised the Regional Directors and Supervisors that we had been informed by the Department of Health, Education, and Welfare that the Department's plan to "pro-rate" grants in the manner which had been used in past years was unacceptable to HEW and could not be done.

After considering several methods of conserving AFDC funds and studying the various problems involved in each plan, it was decided by the executive office and the various divisions involved that the Department will bring its expenditures within the limits of present appropriations by reducing the maximum grants in the AFDC program. The Department deeply regrets having to make this retrenchment in the AFDC program, but, as you know, our maximum assistance funds are limited by Constitutional provisions and the special session of the Legislature had no means of adjusting AFDC funds of $6,150,000 upward since the Constitutional limitation of $60,000,000 each state fiscal year for assistance programs had already been completely appropriated.

In order to have AFDC funds available for the remainder of this biennium (and such funds must be spread among a much larger group of recipients), it is necessary to lower each AFDC maximum grant by $12.

Effective September 1, 1968, the new AFDC maximum grants will be as follows:

No. of Children Certified	Without Caretaker		With Caretaker	
	Present Maximum	New Maximum	Present Maximum	New Maximum
1	$ 46.00	$ 34.00	$ 72.00	$ 60.00
2	67.00	55.00	93.00	81.00
3	88.00	76.00	114.00	102.00
4	109.00	97.00	135.00	123.00
5 or more	130.00	118.00	135.00	123.00

A notice will be included with each August AFDC warrant notifying AFDC recipients of the lowering of the maximum grants effective September 1, 1968. The notice will read as follows:

TO ALL AFDC RECIPIENTS: August 1, 1968

Due to increasing numbers of persons ruled eligible to receive Aid to Families with Dependent Children, the

funds available are inadequate to continue AFDC payments at the present level.

You are hereby notified that the maximum grants in the AFDC program will be lowered to the following amounts effective September 1, 1968:

No. of Children Certified	Without Caretaker	With Caretaker
1	$ 34.00	$ 60.00
2	55.00	81.00
3	76.00	102.00
4	97.00	123.00
5 or more	118.00	123.00

If you are now receiving a grant more than the amount shown above for the number of certified children in your family, your AFDC payment will be lowered to the amount shown above, beginning with the check you receive around September 1.

STATE DEPARTMENT OF PUBLIC WELFARE

The September warrants will be lowered in the State Office for all cases which are now receiving a maximum grant. The Form 1-B printouts which you will receive around August 1 will reflect the lowered maximums on such cases and the Form 1-B will show a September 1 effective date. All August warrants will be written using the old maximums.

NOTE: Some AFDC cases on the master file do not have all certified persons listed in Section II, Dependent Group. In these cases, the number of certified persons from the old Form 1 will be used to adjust the grant. During the August review in AFDC, please pay special attention to the number of certified persons in the Dependent Group Section as it relates to the amount of the recommended grant. Adjustments must be made before August 23, 1968, to be effective for the September warrant.

Any AFDC grants certified during the month of August for an August payment should show the current maximums and these will be automatically lowered in September. Therefore, any Forms 1-A which are to be received in the State Office on or before August 30 should reflect the *old* maximums. Any Forms 1-B submitted after August 1 for adjustments to be effective September 1 should reflect the new maximums.

Please write in these new AFDC maximum grants on your current Form 36. The Form 36 will be revised within a short time and at that time the new maximums will be reflected in the revised Form 36.

These new maximums will be in effect until further notice.

SPECIAL ALLOWANCES WHICH EXCEED NEW MAXIMUMS

All special allowances included in *AFDC* grants which would exceed the *new maximum* when added to the Recommended Grant entered in Item 25 of the budget will be deleted by ADP in the revised Form 1-B printout to be received around August 1. For these cases, the worker should recompute the budget and if a portion of the special allowance can be included without exceeding the new maximum, the worker should submit the Form 1-B showing the new special allowances. The Form 1-B must be submitted prior to August 23 to be effective for the September warrant.

/s/ Burton G. Hackney
BURTON G. HACKNEY

BGH:dcb

Distribution:
Division Heads
Regional Directors (PA & CW)
Supervisors (PA & CW)
Workers (PA & CW)

STATE DEPARTMENT OF PUBLIC WELFARE

OFFICE MEMORANDUM

February 28, 1969

TO: All Field Staff

FROM: Burton G. Hackney
Commissioner
State Office

E-430

SUBJECT: Conversion To New Method of Budgeting Assistance Grants May 1, 1969

Many of you have received some advance information concerning the proposed changes in procedures for budgeting of assistance grants which have been under intensive study for several weeks. This E-Letter, which sets forth the new policies, should be studied in preparation for meetings which will be conducted during the next week to give further interpretation and explanation of these changes.

There have been several major factors involved in the decisions concerning the change in budgeting procedures. First of all, a plan which would standardize more of the budgetary entries for items of need and consolidate several of the previous budgetary allowances has been under consideration for several months. Two significant budgeting changes are made mandatory by Federal requirements effective July 1, 1969. These are the special AFDC earned income exemptions and the requirements that budgetary allowances must be increased to meet the cost of living increases in each particular state. Another factor, which required urgent attention, was the problem of distributing AFDC funds among a greater and ever-increasing number of recipients without having to again lower the AFDC maximums as was necessary last September.

Rather than implementing these various changes on a "piecemeal" basis during the next several months, it

seems more practical to undertake a revision of our budgeting procedures that will accomplish these several required changes at the same time. Therefore, the following changes in budgeting procedures will be effective May 1, 1969:

1. Standard budgetary allowances and standard work-related expense allowance for all categories
2. Cost of living adjustments
3. Special AFDC earned income exemption
4. Percentages of needs payment method
5. Removal of maximum grant limitation in AFDC
6. Minimum grant of $1 in all categories

Due to the needed changes and mandatory requirements, most AFDC cases will be converted to the new budgeting procedures in the State Office effective May 1, 1969. *The adult categories will be converted on an "as reviewed" basis.* All Forms 1-B submitted on OAA, AB or APTD cases to be effective on or after May 1, 1969, *must* contain the new budget information using the new budgeting procedures.

It is anticipated that there will be a large number of AFDC cases which will be affected by the new changes in the method of budgeting. Many grants will be lowered or denied and a significant number of grants will be raised. Some localities have already had preliminary meetings with members of the community and it is expected that group meetings will be held in each locality to make appropriate interpretation of these program changes to members of the community and AFDC recipients. At the meetings which have been held with community groups, the reception to the new budgeting principles has been good and, on the whole, most of the interested individuals and recipients in attendance have indicated that they believe that the new budgeting principles will achieve a more equitable distribution of available funds.

The projections of the effects of the new budgeting procedures *in the adult categories* indicate that *only a small proportion of cases will be lowered.* The effects of

the new budgeting procedures will be further minimized by the fact that in the adult categories the new budgeting procedures will be applied only as cases are reviewed. In the adult categories *no* automatic conversion and *no* desk review will be necessary.

The changes in budgeting principles, in brief, are as follows:

1. *Standard budgetary allowances and standard work-related expense allowance for all categories*—Effective May 1, a standard composite figure for needs for each adult and each child applicable to all categories will be adopted. Many of the allowances known as "special allowances" and "other allowances" will be eliminated as individual budgeted amounts as they are now included in the "Personal Needs Allowance." This new budgeting method involves the grouping of various items into the "personal needs" figure, including food, clothing and incidentals (incidentals are considered to include such expenses as telephone, laundry, transportation, hearing aid upkeep, personal insurance premiums, diabetic supplies, SMIB premiums for ineligible spouse over 65, home remedies, recreation, household equipment and supplies, etc.). The consolidation of these items into the personal needs item will eliminate the necessity of evaluating and verifying certain items. The incorporation of these items into the personal needs figure will eliminate the following items from the budget on Forms 1-A and 1-B:

   Special Needs—Items 12 and 32
   Transportation—Items 16 and 36
   Laundry—Items 17 and 37
   Telephone—Items 18 and 38

Also, the present Base Plans 6A, 6B and 7 will be consolidated and standardized into one base plan, Plan 6.

The new Personal Needs amounts will be as follows:

Plan 13

Adult Recipient	$65
Adult Non-recipient, adult essential person, child 18-21	$39
Child under 18	$25

Plan 6
(formerly Plan 6A, 6B and 7)

Adult Recipient	$125
Adult Non-recipient, adult essential person	$125

Plan 9

Adult Recipient	$21

Plans 10, 11, 12, 14, 15, 16 and 17

Adult Recipient	$21
AFDC child in State School for Mentally Retarded (Plan 16)	$ 8

Housing has been reviewed and the new housing amounts will be as follows:

Rented quarters—Public, including utilities

1 person	$36
2-4 persons	$42
5 or more persons	$49

Rented quarters—Private (as paid up to)

1-2 persons	$33
3-4 persons	$44
5 or more persons	$50
Utilities	$13

Owned quarters—Private (as paid up to)

1-2 persons	$33
3-4 persons	$44
5 or more persons	$50
Utilities	$13

The present policies concerning the distribution and prorating of shelter and utilities will remain the same. Only the amounts have been changed.

Other Allowances—Items 20 and 40

All "other" allowances have been deleted with the exception of "Cost of Care for a Seeing Eye Dog". This is the *only* "other" allowance that will be accepted on Forms 1-A/1-B effective for May 1, 1969.

Special Allowances—Item 90

Effective May 1, 1969, in all categories the only special allowances and codes to be retained are as follows:

121—glasses
122—dentures
123—hearing aid (does not include hearing aid upkeep)
124—shelter repair

In the adult categories, special allowances now included in Item 90 will be retained until the original plan as initiated has been consummated. In AFDC, the remaining amount of any special allowance now included in the grant will be reduced by the AFDC percentage reduction factor and the remainder will be included in the May warrant.

As an ongoing procedure for all categories, the worker is to enter the actual special allowance amount which will be reduced in ADP by applying the percentage reduction factor with the remainder to be paid in one payment for AFDC or pro-rated over the appropriate number of months in the adult categories because of the maximum grant limitations.

Standard Work-Related Expense Allowance

A standard work-related expense allowance has been adopted for all categories. The standard allowance is $28 for a full-time employee (i.e., more than 20 hours per week) and $14 for a half-time employee (i.e., 20 hours or less per week). This allowance covers all work-related expenses except child care. The $28 and/or $14 allowance covers withholding tax, social security, special clothing, insurance, lunches, transportation, and the old chart

allowance for employed persons. The worker will no longer be required to compute actual expenses relative to employment but instead will deduct the standard allowance from gross income. (See special rules for AFDC and AB earned income exemptions.)

Use Present Form 1-A and Form 1-B Until Revised

Due to time limitations, it is impossible to design and order forms for the revised budgeting system. This and the fact that budgeting may be further revised in the near future have contributed to the decision to use the present Forms 1-A and 1-B. This will involve using certain items in the budget for purposes other than what is printed on the form and deletion of other items.

The new budget will be composed of the following:

Personal needs—Items 11 and 31
Housing—Items 13 and 33
Utilities—Items 14 and 34
Prescribed Drugs—Items 60 and 60
Social Care—Items 15 and 35
Professional Care—Items 70 and 70
Other—Items 20 and 40
Total Needs (presently "other")—Items 21 and 41
Recognizable needs (presently "Total Needs")—Items 22 and 42
Net Income—Items 23 and 43
Unmet needs—Items 24 and 44

More specific details concerning the new budgeting method will be released about the middle of March.

Cost of living adjustment—Approximately an 11% cost of living adjustment has been applied as can be noted from the above figures. This was done on all individual items included under the "old" budgeting process before they were combined into the new budgetary items. This is based on the rise in living costs since the last adjustment was made for food, clothing, shelter, utilities, and incidentals.

3. *Special AFDC Earned Income Execption Policy*—This policy involves the exempting of certain portions of income earned by AFDC recipients and members of their dependent group. HEW requires the *exemption* of the first $30 and one-third of the remainder of *earned* income in AFDC. (The earned income *exemption* in AFDC must not be confused with the standard work-related expense allowance of $28 or $14 which applies to all categories.) This procedure is mandatory by HEW regulation July 1, 1969. The Department is implementing this policy effective May 1, 1969, to encourage employment of AFDC members.

   The following procedure will be used for the special AFDC earned income exemption for AFDC *recipients*:

   A. Combine *gross* earned income (i.e., total earned income before *any* deductions) of all members of AFDC dependent group, except that all earned income of any child under 21 in the AFDC dependent group (Status Code 4 and/or 5) is excluded *if* the child is a full-time student or is a part-time student who is not a full-time employee.
   B. Deduct $30 from the gross earned income figure.
   C. Deduct one-third of the remainder.
   D. Deduct the standard work-related expense allowance for *each* employed person.
   E. Deduct any child care expense from the remainder to arrive at the *net earned income* to be combined with other income (such as Social Security) and applied to the recipients' recognizable needs.

   An *applicant* for AFDC (who has not been a recipient within the past four months) is *not* entitled to the special AFDC earned income exemption (i.e., $30 plus one-third of the remainder of gross earned income) *unless* budgetable needs exceed net income *without* application of the special exemption policy. For example, AFDC applicants with earned income must first meet the definition of need with only the standard allowances (i.e., standard work-related expense allowance and child

care, if any) being deducted from earned income. Then, if eligible for AFDC on the basis of need, they are entitled to the special AFDC earned income exemption which will require re-computing the net earned income.

4. *Percentage of needs payment method*—Generally, this new budgeting concept will involve the following:

   A. Determine need using the same allowances for all categories, as explained earlier. (In most cases, needs will be limited to a standard allowance for each adult and each child; allowances for shelter and utilities; and actual cost of prescribed drugs, if any.)

   B. Multiply total needs by a pre-determined percentage to arrive at the percentage of needs the Department can meet. (The percentage for each category will be determined by State Office on the basis of the number of recipients and the amount of funds available for each category.) The use of a percentage for determining recognizable needs would apply any reduction in grants to all cases in a category rather than lowering only those who are receiving a maximum grant. The percentage can be adjusted up or down according to the amount of funds available, although it is anticipated that it will not vary any more than maximum grants have varied in the past.

   C. After the percentage is applied to the total needs to arrive at "recognizable needs", the amount of net income (if any) will be deducted to derive the amount of grant.

   In the great majority of cases, Steps "B" and "C" will be performed by the computer. In most individual and companion cases, the worker will enter only the needs and income items in the budget and the computer will run the total, apply the appropriate percentage, and deduct net income to determine amount of grant. (The Form 1-B returned to the worker will show these amounts.) In combination

cases and nursing home cases, the worker will continue to allocate income and determine amount of grant and vendor rate. Detailed instructions concerning the new budget entries will be sent to the field staff about the middle of March.

As soon as the percentages of need which can be recognized are officially approved, the field staff will be notified of the percentages.

5. *Removal of Maximum Grant Limitation in AFDC*—The amount of grant in AFDC will no longer have an arbitrary limitation in terms of dollar maximum or family size. A proportional share of needs of each certified child will be included in the grant.

   The current maximum grant limitations for OAA, AB and APTD remain in effect.

6. *Minimum Grant of $1 in all Categories*—Effective May 1, 1969, the minimum grant in all categories will be $1.00.

CONVERSION

Field Re-computation of AFDC Earned Income

In order for AFDC individual cases with earned income to be automatically converted in ADP to the new budgeting procedure by May 1, the field staff must re-compute net earned income according to the new policy in AFDC (outlined earlier in this directive). The following schedule outlines the procedures to be used for AFDC individual cases having earned income:

March 7—ADP will mail to the field staff "Net Earned Income Cards". These cards will be printed for each AFDC case with *earned* income, except combination and combination-companion cases. (The procedure for handling these cases is detailed later in this directive.) These cards will notify the workers that net income must be re-computed. The cards will also be used to send this information to State Office.

When "Net Earned Income Cards" are received, the field staff must:

(1) Determine *gross* income (*total* pay before any deductions are made by the employer)
(2) Net the earned income using the *new* AFDC Income Exemption Policy
(3) Enter on the card the amount of the income, *if any*, which remains after the new exemptions are applied.

If there is no net earned income remaining, a "zero" must be entered and the card *must* be returned to ADP.

By March 17—"Net Earned Income Cards" must be returned to ADP.

Upon receipt of the "Net Earned Income Cards", ADP will:

(1) Combine the amount of net earned income as shown on the card with other income for each of these cases to arrive at the amount of total income
(2) Re-compute the budget using the new budgeting procedure
(3) Apply the AFDC percentage to the total needs to arrive at the recognizable needs
(4) Subtract the total amount of income from recognizable needs to arrive at the new amount of grant to be effective *May 1.*

Note: For cases where the "Net Earned Income Cards" are not received, ADP will use the old amount of net earned income that is presently shown on Form 1-B in Item 80, Line 4, "Net Earned Income" to compute the new budgets for May 1.

No-Processing Period for AFDC Forms 1-B

There will be a no-processing period for Forms 1-B on *AFDC* cases beginning March 24, 1969. (Forms 1-B received in ADP before 5 p.m., March 21, will be processed.) Forms 1-B submittal should not resume until a Form 1-B printout or a special card, "Case Review Card", is received. (Cards will be mailed from State Office around April 4 on combination and combination-com-

panion cases which are to be field reviewed.) AFDC *Forms 1-B* submitted to ADP after the no-processing period must reflect the *new budgeting procedures* as they will be effective May 1, 1969.

No-Processing Period for AFDC Forms 1-A

There will be a no-processing period for Forms 1-A on AFDC cases beginning at 5 p.m., April 23 and extending through April 30. Submittal of AFDC Forms 1-A may resume on May 1, 1969. All AFDC Forms 1-A submitted after the no-processing period must reflect the new budgeting procedures. Workers should make every effort to complete AFDC applications prior to the no-processing period so that the recipient might benefit from an April warrant. AFDC Forms 1-A submitted during April *prior to the April cut-off date* must reflect the *old budgeting procedure* as they will be effective for April, 1969. If such forms contain an entry for earned income, a memo *must* be attached to the Form 1-A stating the amount of net earned income to be considered effective May 1 in accordance with the new AFDC earned income exemption.

Dates for Use of New Budgeting Procedures for OAA, AB and APTD

Forms 1-B for OAA, AB and APTD cases submitted to ADP to be received after March 21 must reflect the *new budgeting procedures* as they will be effective May 1, 1969.

Forms 1-A on OAA, AB and APTD which are received in ADP on or after May 1, 1969, must reflect the new budgeting procedures.

The no-processing period is not applicable to OAA, AB and APTD.

Field Must Review Combination and Combination-Companion Cases (AFDC and adult grant(s) in same dependent group, as defined in Form 1-A instructions)

The new budgeting procedure leaves latitude to the worker in the distribution of income and housing between

the AFDC budget and the adult budget in combination and combination-companion cases as has been the policy in the past. Therefore, the worker will need to review these cases to effectively apply this policy whereby the recipient will gain maximum use of agency funds. Each worker will be notified of combination cases which need to be reivewed by a special case review card, which will be mailed to the field shortly after April 1, 1969. These cases (both the adult and AFDC case) must be reviewed during the April certification period using the new budgeting procedure and Forms 1-B must be submitted with new budget information to be received in ADP by 5 p.m., April 23. May warrants will be held on any of these cases on which Forms 1-B are not returned by April 23. A separate E-Letter detailing the method of budgeting combination cases will be sent to the field staff before the case review cards are mailed from State Office. *It will be the responsibility of the individual worker to notify in writing each recipient involved in the combination and combination-companion case review of the grant adjustment(s).*

For combination and combination-companion cases certified in April, it will be the worker's responsibility to adjust these grants to reflect the new budgeting procedures as soon as the Form 1-B is received. The May warrants on these cases will be held until the Forms 1-B adjusting the grants are received.

Notices to AFDC Recipients

All individual AFDC cases (that is, all AFDC cases except combination and combination-companion) will be notified by ADP in a special notice to be mailed with the April warrant. This notice will advise each recipient of the amount of grant (or denial) which will be effective May 1, 1969. If a case is reviewed and the amount to be received is different from that reflected in the special notice sent from the State Office, the worker will be held responsible for the interpretation of the reason for the change and for notifying the recipient of the new amount of grant for May 1.

Applicable Policy Changes

All sections of the Financial Services Handbook, Forms Manual, Medical Care Manual, Forms 1-A/1-B Instructions, or any other policy material in conflict with this E-Letter are hereby superseded. All items of Forms 1-A/1-B instructions and policy material not in conflict with this E-Letter remain in effect. Revised policy material and instructions will be forthcoming as soon as the proper revisions can be drafted and distributed.

Meetings of Field Staff

Orientation for application of these new policies will begin on March 4 with Regional Directors in Austin. The Regional Directors will then have March 5 and 6 to orient supervisors who will in turn hold meetings on March 7 and 10 to orient workers.

/s/ Burton G. Hackney
BURTON G. HACKNEY

BGH:dcb

STATE DEPARTMENT OF PUBLIC WELFARE

OFFICE MEMORANDUM

March 13, 1969

To: All Field Staff

FROM: Burton G. Hackney
Commissioner
State Office

E-434

SUBJECT: Percentage of Needs Payment Method

As explained in E-430, effective May 1, 1969, a percentage payment method will be used to determine the amount of needs the Department can meet based upon the amount of available assistance funds and the number of recipients in each category.

The percentages of needs the Department can meet as of May 1, 1969, have been officially approved as follows:

OAA	100%
APTD	95%
AB	95%
AFDC	50%

As can be noted, the Department can meet 95% of the budgetable needs of APTD and AB recipients. It is to be emphasized that this is not proration but is an administrative procedure employed to prevent over expenditure of funds that would otherwise have resulted when standardized allowances were established for all categories. These new standard allowances included some increases which otherwise would not have been given. The percentage control factor has been calculated so as to maintain over-all expenditures in AB and APTD funds at present levels. These new standard allowances ($65 for personal needs for each adult recipient, increased housing, etc.)

could not be given in all categories without the application of the percentage control. Very few AB and APTD grants will be lowered under the new procedure, and an offsetting number of cases will be raised. The Department continues to administer these two categories at the same rate of expenditure as before. A substantial number of OAA cases will be raised under the new method and new allowances. Maximum grants, however, will continue to apply in the adult categories (OAA, APTD, AB).

The percentages listed above should be applied by the field staff in determining amounts of grants for combination, companion-combination, institutional and nursing home cases. For individual and companion cases, these percentages will be applied in State Office to determine amounts of grants. In companion cases where two categories of different percentage rates are involved, an average percentage will be applied to the amount of total budgetable needs to determine the amount of recognizable need. For example, if one person is an OAA recipient and the companion is an AB or APTD recipient, the percentage that will be applied to the total needs budget will be 97.5%, which is the average percentage of 100% and 95%. The average percentage will be applied in State Office for companion cases.

The percentage payment method *does not* apply to vendor payments. These amounts will continue to be paid at the same rate.

The percentages listed in this E-letter will continue to be in effect until it is necessary to make adjustments due to the number of recipients and/or the amount of available funds. When any adjustments are to be made, advance notification will be given by E-letter.

/s/ Burton G. Hackney
BURTON G. HACKNEY

BGH:dcb

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET. AL.

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

JUDGMENT—July 1, 1969

This action came on for hearing on Defendant's motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed on Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges.

After considering the motion to dismiss Ruth Jefferson the Court finds that at the time this case was filed on February 12, 1969 Ruth Jefferson was a recipient of the AFDC benefits and was at that time a proper party plaintiff and representative of the class of individuals receiving AFDC benefits; the Court further finds that Ruth Jefferson has not been removed from the AFDC rolls and is therefore a proper party plaintiff and is representative of the class of individuals receiving AFDC benefits.

It is therefore ORDERED, ADJUDGED and DECREED that Defendant's motion to dismiss Ruth Jefferson as a party plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party plaintiff.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed herein

and the argument of counsel IT IS ORDERED, ADJUDGED and DECREED:

1. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

2. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

3. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

4. The Texas state-wide plan known as E-430 and E-434 effective May 1, 1969 violates the requirements established by the Congressional Amendment 42 U.S. C.A. 402 (a) (23) to the AFDC program and is null and void.

5. Defendants are permanently enjoined from enforcing the Texas plan E-430 and E-434 providing for payments to recipients of AFDC and from receiving funds from the federal government until such time as a plan is formulated which carries out the provisions of 42 U.S.C.A. 402 (a) (23).

It is further ORDERED, ADJUDGED and DECREED that the injunction herein granted is stayed for 60 days from date hereof in order to give the Texas Legislature

an opportunity to implement a plan which will conform to the requirements of 42 U.S.C.A. 402 (a) (23).

In due time an opinion will be handed down.

Dated this 1st day of July, 1969.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

OPINION—Filed July 31, 1969

Before GOLDBERG, Circuit Judge, and HUGHES and TAYLOR, District Judges.

PER CURIAM:

There are here involved two similar cases. The defendants in both cases are Burton G. Hackney, Commissioner of Public Welfare of the State of Texas, certain members of the State Board of Welfare and certain officials of the State Department of Public Welfare. In one case the Plaintiffs are Maria T. Davila and No Ann Guttierrez and in the other Ruth Jefferson, Emma Gipson and Jose Apalinor Vasquez. Plaintiffs sue individually, on behalf of their minor children, and on behalf of all other parents, relatives or minor children similarly situated.

Prior to September 1, 1968, the Texas State Department of Public Welfare, hereinafter referred to as Department, had maximum limits for recipients of Aid to Families with Dependent Children (AFDC) depending on the number of children in the family. Effective Septem-

ber 1, 1968, the Department reduced each such maximum across the Board by an amount of $12.00. The original suit filed by Jefferson, et al, sought to have that decision held void and to restrain the Department from making any future and similar cuts.

On March 9, 1969, the Department announced the implementation of a new plan E-430 and E-434 to be effective May 1, 1969, under which the grants to AFDC recipients were reduced 50%. There was no reduction in any other welfare program.

As a result of this action by the Department, Davila and Gutierrez filed their action in the Western District of Texas seeking: (1) a declaratory judgment voiding that part of the new regulation reducing the AFDC grants, and (2) an injunction to restrain the implementation of the regulation which restricts the amount of assistance for AFDC recipients to a percentage of unmet budgetary need which is less than that granted to recipients in other categories, and (3) an injunction prohibiting payments of assistance less than the unmet budgetary needs. Jefferson, et al, amended their complaint which had been filed in the Northern District to seek similar relief. On motion of the defendants the two actions were consolidated in the Northern District of Texas.

At the beginning of the hearing on the merits, a motion was filed by the defendants to dismiss Ruth Jefferson as a party plaintiff for the reason that she was not a needy person eligible to receive AFDC benefits nor was she representative of the class of individuals receiving AFDC benefits.

It appears that the parties stipulated that Ruth Jefferson was the mother of five children who live with her at her place of residence, that she and her children have no regular income, resources, support or maintenance other than the $120.00 per month public assistance payments and agricultural commodities received from the U. S. Department of Agriculture. She also receives spasmodic assistance in the form of money from the Orleans Fund and has worked on brief occasions. (Stipulation No. 3). In her deposition taken on April 23, 1969, Ruth Jefferson testified that she was receiving AFDC benefits at

the time this suit was filed (February 12, 1969) and is presently still receiving them. At the hearing on July 1, 1969, it was admitted by defendants that she had not been removed from the AFDC rolls.

It is our opinion that under these circumstances Ruth Jefferson is a proper party plaintiff and representative of the class of persons receiving AFDC benefits. The motion to dismiss is denied.

This Court does not pass on the eligibility of Ruth Jefferson to receive AFDC benefits. That matter is within the jurisdiction of the State Department of Public Welfare and we leave it to the Department for its determination.

Before discussing the issues in this case we will next briefly review the relevant federal and state welfare provisions.

I.

HISTORY

In 1935 Congress provided for various categories of Public Welfare.[1] Under the Old Age Assistance (OAA) program, as presently constituted, grants are authorized "for the purpose of enabling each State to furnish financial assistance to needy individuals—(and) medical assistance of behalf of aged individuals." Under the Aid to the Blind (AB) and Aid to the Permanently and Totally Disabled (APTD) programs, grants are likewise authorized to "needy individuals" in each category. The statute authorizing grants for Aid to Families with Dependent Children (AFDC) provides that it is "for the purpose of encouraging the care of dependent children in their own home."

Under each category provisions have been made for the states to implement the programs by submitting plans and matching funds. If the state elects to participate in one or all of the programs, the federal government supplies part of the monetary requirements after the state

[1] Old Age Assistance (OAA) 42 U.S.C. Sec. 301, Aid to Families with Dependent Children (AFDC) Sec. 601, Aid to the Blind (AB) Sec. 1201, Aid for the Permanently and Totally Disabled (APTD), Sec. 1351.

plan has been approved by the Secretary of Health, Education and Welfare. There is no mandatory requirement that such a program be established, or once established, that it be continued.

The Texas Constitution originally prohibited any welfare grants,[2] and this provision has been retained as Section 51 of Article III of the Constitution from the date of its adoption in 1876 to the present time. Provision for payment of grants to individuals has been made by amendments to the Constitution in the form of exceptions to the prohibition.

In 1935 section 51b of Article III was added so as to authorize Old Age Assistance to "actual bona fide citizens of Texas who are over the age of sixty-five (65) years . . ."

This amendment was followed in 1937 by the adoption of 51-c to provide assistance to the needy blind and by adoption of Section 51-d which grants assistance "to destitute children under the age of fourteen years."

In 1945 Sections 51-b, c, and d were consolidated into Section 51-a of Article III. In 1956 Section 51-b-1 was adopted providing Aid to the Permanently and Totally Disabled.

These amendments as well as others adopted for needy persons provided for maximum grants in each of the various categories and set a dollar ceiling on the amount that could be paid for all welfare programs out of state funds. From time to time the maximums and the ceiling were increased.

An amendment, adopted in 1963, combined Sections 51-a and 51-b-1 into Section 51-a and raised the ceiling for all programs from $52,000,000.00 to $60,000,000.00.

In 1965 Section 51-a was again amended to provide medical assistance in addition to grants to the four categories. The $60,000,000.00 ceiling was retained, but no maximums were set.

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[2] Section 51 of Article III provided that the Legislature ". . . shall have no power to make any grant or authorize the making of any grant of public moneys to any individual,—whatsoever."

In 1968, an amendment proposed to raise the ceiling from $60,000,000.00 to $75,000,000.00 was defeated by the voters of Texas.

Under the present Constitutional provision the amount to be appropriated for each category is left to the Legislature. In House Bill No. 5, 60th Legislature, First Called Session, the Legislature appropriated $48,000,000.00 for Old Age Assistance, $1,400,000.00 for the Needy Blind, $4,250,000.00 for the Permanently and Totally Disabled and $6,150,000.00 for Families with Dependent Children.

II.

ISSUES

We now turn to the issues.

The issues presented are:

1. Is the payment of only 50% of unmet budgetary needs to recipients of AFDC in contrast to the payment of 95% to 100% of need to other welfare recipients violative of the Equal Protection clause of the Fourteenth Amendment?

2. Is the payment of a lesser percentage to AFDC recipients vis-a-vis other welfare recipients the result of racial or ethnic prejudice and violative of federal civil rights enactments or the Equal Protection clause?

3. Does the present AFDC plan in Texas violate the requirements of § 402(a)(23) of the Social Security Act?

III.

EQUAL PROTECTION

A. *NEEDS*

We first consider whether the payment of only 50% of unmet budgetary needs to recipients of AFDC in contrast to the payment of 95% or more of need to other welfare recipients is violative of the equal protection clause of the Fourteenth Amendment.

In determining grants for needy persons, the Texas Department of Public Welfare sets a "Standard Budgetary Allowance" schedule providing like amounts in all

categories for personal needs such as housing, utilities, laundry, etc. There may be differences in such allowances when differences in need exist (e.g., different amounts for housing as per the size of the family, special allowance for maintenance of seeing eye dogs, etc.), but it is not contended by plaintiffs that there is discrimination in the computation of the budgetary allowance. It is contended, however, that AFDC recipients are the victims of discrimination in receiving only 50% of their computable needs.[3]

We begin with the observation that needy persons cannot claim monetary relief as a vested right. In the case of *Sweeny* v. *State Board of Public Assistance*, 36 F. Supp. 171 (M.D. Pa. 1940), *affirmed*, 119 F.2d 1023, 3 Cir. 1941, *cert. denied*, 314 U.S. 611, the Court stated:

> "Relief or public assistance is not a vested property right held by any person or group of persons. Russell v. City of Providence, 7 R.I. 566. It is a gratuity from the state made to those whose status and condition measured by standards promulgated by the State Board of Public Assistance show an urgent need for financial aid . . . ."

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[3] As an example plaintiff develops a table comparing an OAA recipient with one minor child to an AFDC recipient with one minor child.

	OAA	AFDC	
Adult's Personal Needs	$ 65.00	$ 65.00	
Child's Personal Needs	25.00	25.00	
Housing	42.00	42.00	
Total allowable needs	$132.00	$132.00	
50% Reduction application to AFDC only		66.00	
	$132.00	$ 66.00	
Outside Income (Social Security deducted with $5.00 credit)	45.00	50.00	(child support deducted)
TOTAL PAYABLE BENEFITS	$ 87.00	$ 16.00	

Plaintiffs do not dispute this proposition. They do contend, however, that once Texas has undertaken to provide assistance, it cannot discriminate between recipients in the various welfare categories. Plaintiffs argue that there is but one welfare program with the one purpose of giving assistance to the needy. Paying only 50% of unmet budgetary needs to AFDC recipients, while paying 95% to 100% to other recipients is, according to plaintiffs, an invidious discrimination violative of the Equal Protection clause of the Fourteenth Amendment. We must disagree.

If one looks only at the amount of the grants provided for in each welfare category, there does appear to be discrimination against AFDC recipients, but the size of grants alone is not decisive of the constitutional questions before us. The critical question is not whether differences in grants exist, but whether such differences are irrational under the circumstances and therefore constitutionally impermissible. To answer this question, we must look to the structure and purposes of the Social Security Act and its various programs.

Plaintiffs contend that the only purpose of public welfare is the satisfaction of financial need. While this certainly is one of its purposes, the various programs established under the Social Security Act clearly indicate that other more diverse purposes are also present. It is these additional purposes which justify in large measure the difference in financial assistance accorded recipients in the various welfare programs. Under this view, the difference in grants between programs merely reflects the fact that disparate purposes call for dissimilar solutions.

By way of illustration we note a significant difference in emphasis between the three non-AFDC programs and Aid to Families with Dependent Children. In the non-AFDC programs, the emphasis is primarily on the creation and the retention of the ability for self-care. Thus the OAA program furnishes financial assistance for "rehabilitation and other services to help individuals . . . attain or retain capability for self-care . . ." 42 U.S.C.A. § 301. Similar provisions appear in 42 U.S.C.A. § 1201

and § 1351 establishing the AB and APTD programs respectively. AFDC, on the other hand, is designed primarily to maintain and strengthen family life. 42 U.S.C.A. § 601 thus provides assistance:

> "For the purpose of encouraging the care of dependent children in their own home or in the home of relatives by enabling each State to furnish financial assistance and rehabilitation and other services - - - to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen the family life and to help such parents or relatives to attain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection - - -."

In the recent case of *Lampton* v. *Bonin*, No. 68-2092, E.D. La. April 15, 1969, —— F.Supp. ——, the Court was faced with the same issues as here. In disposing of the argument that the four programs are in conception and purpose but one program, the Court said:

> "The primary purpose of ADC [AFDC] appropriations, unlike appropriations for the other three categories, is not simply to enable the states to furnish assistance to needy children. True, these funds are to be used for this purpose, but the enabling of states to furnish assistance to needy children is only a means to the real primary purpose; "the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives . . . to help maintain and strengthen family life . . ." It is not enough that dependent children be given simply financial assistance; the chief purpose of the Social Security Act section on dependent children is to see that such children are raised by their parents or relatives in a family atmosphere. Plaintiffs point out that in 1935, when the Social Security Act was enacted, the primary statutory purpose of ADC [AFDC] was simply to enable states to furnish financial assistance to needy children. But we must consider the Social Security

Act as it exists today, not as it was written thirty-four years ago.

Furthermore, we cannot agree with plaintiffs that the four categories of public assistance found in the Social Security Act "are in conception, purpose and operation but one program with four groups of beneficiaries . . . ." Although the four categories may have some common provisions and objectives, each category is embodied in a separate title of the Social Security Act. Each of these titles is different from the others. Each title calls for a state plan for one category only, which state plan is to be independent of the plans under the other titles. A state plan for each category must be approved by the Secretary of Health, Education and Welfare if it meets the requirements of its title. Section 404(a) of the Social Security Act, 42 U.S.C. § 604(a) provides that if the Secretary disapproves of a state plan on the Aid to Families with Dependent Children program, he must withhold federal payments to the state for that category or limit payments to parts of that particular state plan not affected by the disapproval. There is nothing in Section 404(a) which would authorize the consequences of nonconformity of this plan to be applied to any other plan.

Even more damaging to plaintiffs' argument was the enactment of Title XVI of the Social Security Act, 42 U.S.C. § 1381-1385, in 1962. Up until that time it was impossible to have a common plan for any of the four categories. But when Congress enacted Title XVI, which authorized states, at their option, to have a single plan for public assistance to the aged, blind, and disabled, in lieu of the three separate plans under Titles I, X, XIV, the titles dealing with aid to these individuals. But it is most significant that while Congress considered the three adult categories similar enough to permit the states to adopt a common plan for them, it did not include Aid to Dependent Children in Title XVI, so that states must still keep the ADC [AFDC] plan and

program separate, even if they combine the other three categories into one plan."

We are of the opinion that each of the titles of the Social Security Act dealing with the four categories here involved stands alone. The State may exercise its powers independently for each of the programs and have different levels of payment for each program without running afoul of the Fourteenth Amendment. This conclusion is not affected by the fact that Texas, in establishing standards of need, has defined the needs of the recipients in the four welfare categories as the same. Plaintiffs argue, in effect, that whatever differences may have existed between the needs of recipients in the various categories has been obliterated by this legislative action. The problem with this argument is that an identity of needs does not obscure the differences in the purposes and functions of the various programs. Welfare programs do not all tend toward the same social objective. Self-help for the aged, blind and disabled may indeed pose a more pressing social problem than strengthening family life among recipients of AFDC. This question is for the Legislature. Differing purposes beget dissimilar remedies. There remain priorities in time and functions in alleviating human misery. Unless the Constitution mandates that all human needs be met, we must accept classifications and piecemeal solutions which are not egalitarian between all programs and all human beings.

For the foregoing reasons we hold that the payment of only 50% of unmet budgetary needs to recipients of AFDC as against 95% to 100% of need to other welfare recipients is not violative of the Equal Protection clause of the Fourteenth Amendment. As said in *Morey* v. *Doud*, 354 U.S. 457 (1957):

> "'1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and voids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reason-

able basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79, 31 S. Ct. 337, 55 L.Ed. 369."

The Texas Legislature was confronted with a ceiling of $60,000,000.00 to be spent for the four categories of public welfare. No more than that amount could be appropriated by the Legislature and it was the duty of the Legislature to use its judgment in the manner and the amount the available money should be divided.

In making the appropriation for the present biennium the Legislature could have considered numerous factors. The purpose, as set out in the Social Security program, for which grants are made to recipients in each category is a primary consideration. Legislators might well have considered the difference in health requirements of the aged, blind and permanently disabled as well as their inability to care for themselves and their unemployability. Of the four groups women with children are most likely to be able to work. Mothers having the care of young children frequently do work and receive no outside assistance. The Legislature might have considered that many mothers could work and would do so with some assistance which would enable them to keep their children in the home, particularly at this time when workers are sorely needed. The Legislature might also have thought they should be encouraged "to attain . . . capability for the maximum selfsupport and personal independence . . . as provided in the Act authorizing the AFDC program."[4]

[4] According to Stipulation 90 about ½ of the caretakers are too uneducated or handicapped to hold even the lowest paid jobs. This fact, however, may not have been know to the Legislators.

Considering the different purposes of programs in the Social Security Act and the differences in the capacity for self-help among recipients in the various categories, we cannot say that the action of the Legislature in providing less assistance for AFDC recipients than for the other recipients of welfare was "without any reasonable basis and therefore . . . purely arbitrary." *Morey* v. *Doud, supra.*

B. *ETHNICITY AND RACE*

Plaintiffs' next contention is that the discrimination against the AFDC recipients vis-a-vis other welfare recipients is the result of racial or ethnic prejudice and is violative of the Equal Protection clause of the Fourteenth Amendment and a violation of the federal civil rights enactments.[5]

Plaintiffs point to past policies in Texas as evidence that the reductions in AFDC benefits were racially discriminatory. Plaintiffs specifically point to the "man in the house" policy prior to the decision in *King* v. *Smith*, 392 U.S. 307 (1968), and the "suitable home" policy designed to exclude children because of their mother's allegedly improper behavior.

As evidence of present discrimination plaintiffs point to the state appropriations for 1968. The OAA program was allocated $48,162,898.76 for 229,654 recipients, while AFDC was allocated $6,149,427.73 for 138,942 recipients, more than 6 times the funds for less than twice the number of the recipients.

The plaintiffs contend that the difference in the appropriations for AFDC and the other groups is violative of the Equal Protection Clause because there is a larger

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[5] 42 U.S.C. sec. 2000-d provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in or denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

percentage of Negroes and Mexicans in AFDC than in the other categories.[6]

Plaintiffs contend that in order to remove the discrimination between categories, recipients of AFDC should receive 95%-100% of unmet needs. They seek to have Section 51-a Article III of the Texas Constitution held unconstitutional because it sets a limit on the amount of funds that the Legislature may expend on the various welfare programs. However, if the provisions of Section 51-a were declared invalid, the entire program of welfare would be destroyed, since this section is the only authorization which the Legislature has to appropriate money for the needy. Should this authorization be declared invalid, then 51-a prohibits the Legislature from making any grant of public moneys to any individual. Apparently under this contention plaintiffs desire this Court to take over the responsibilities of the people to amend the Constitution and of the Legislature to allocate funds. This we do not intend to do.

To remove the alleged diserimination, however, it would not be necessary to pay 100% of unmet needs. It would be necessary only to balance the payments to meet like percentages of need throughout the various categories.

We will therefore address ourselves merely to the question of whether there is discrimination between the va-

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[6] Program	Year	Percentage of Negroes and Mexican Americans	Percentage of White-Anglos	Number of Recipients
OAA	1969	39.8	60.2	230,000
	1968	38.7	61.3	
	1967	37.0	63.0	
APTD	1969	46.9	53.1	
	1968	45.6	54.4	4,213
	1967	46.2	53.8	
AB	1969	55.7	44.3	
	1968	54.9	45.1	14,043
AFDC	1969	87.0	13.0	
	1968	84.9	15.1	136,000
	1967	86.0	14.0	

rious categories based on racial or ethnic prejudice. From an examination of the stipulations we have concluded that the plaintiffs have failed to make a sufficient showing of racial or ethnic discrimination.

We have based our conclusions on the following:

1. There has never been a reduction in the amount of money appropriated by the Legislature to the AFDC program. (Stipulation No. 54).

2. Since 1943 there have been five increases in the amount of money appropriated by the Legislature to the AB and AFDC programs and six increases in the OAA program. (Stipulation Nos. 48 and 49).

3. Since 1959 there have been two increases in the amount of money appropriated by the Legislature to the AFDC program. (Stipulation No. 50).

4. Since 1943 the appropriation by the Legislature to the OAA, AB and AFDC programs have increased by the following percentages:

OAA — 211%
AB — 200%
AFDC — 410%
(Stipulation No. 51).

5. Since 1963 the appropriation by the Legislature to the OAA, AB, AFDC and APTD programs have increased by the following percentages:

OAA — 13%
AB — 0
AFDC — 58%
APTD — 183%
(Stipulation No. 53).

6. The majority of the AFDC families having their grant raised on May 1, 1969, were large families and the large family groups receiving AFDC assistance grants are predominately Negro and Mexican-American. (Stipulations Nos. 38 and 39).

7. In January, 1969, the Legislature authorized the expenditure of an additional $350,000.00 in the AFDC program for the fiscal year ending August 31, 1969. (Stipulation No. 72).

8. The Legislature has submitted a constitutional amendment to be voted on in August, 1969, which would authorize the Legislature to appropriate up to $80,000,000.00 for assistance grants in the OAA, AB, APTD and AFDC programs. If adopted, the present plan is to recommend to the Legislature an increase of $11,900,000.00 in the AFDC program which will then permit AFDC recipients to be paid 100% of unmet need. (Stipulation 75).

9. Under the proposed plan for appropriations, if the amendment is adopted, the AFDC program would receive $11,900,000.00 of the $15,000,000.00 in additional funds available to operate the OAA, AB, APTD and AFDC programs. (Stipulation No. 76).

10. Recipients in the AB program being paid 95% of need are 54.2% Negro and Mexican-American and 44.3% white-Anglo. (Stipulations Nos. 23 and 31).

11. The depositions of Welfare officials conclusively establish that the defendants did not know the racial make-up of the various welfare assistance categories prior to or at the time when the orders here under attack were issued.

Under the foregoing undisputed facts we are of the opinion that plaintiffs have failed to make a sufficient showing of racial or ethnic discrimination to require us to declare void under the Equal Protection clause or under the Civil Rights Act of 1964 either the Legislative Appropriations bill or Section 51-a of Article III of the Texas Constitution.

C. *EQUAL PROTECTION STANDARDS*

Plaintiffs contend that despite the above enumerated considerations, the Texas Welfare program for AFDC recipients must be declared unconstitutional as presently constituted. They argue that any reasons advanced by the state for unequal treatment of recipients in the various programs must be examined not by traditional equal protection standards, but according to the strict scrutiny standard of certain recent Supreme Court pronouncements. Plaintiffs rely on *Shapiro* v. *Thompson*, 37 U.S. L.W. 4333 (April 21, 1969); *Levy* v. *Louisiana*, 391 U.S.

68 (1968); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); and *Carrington* v. *Rash*, 380 U.S. 89 (1965), for the proposition that Texas must show a "compelling state interest" to justify unequal treatment of recipients in the various welfare programs. Absent such a compelling state interest, plaintiffs say the present AFDC allotment is constitutionally insufficient. We cannot agree. Analysis of plaintiffs' cases indicates certain crucial distinctions which make them inapplicable here.

In *Shapiro* v. *Thompson*, *supra*, the Supreme Court struck down a Connecticut welfare requirement which made one year's residence in the state a prerequisite to the receipt of public assistance. In finding a denial of equal protection in such a requirement, the Court found that Connecticut had failed to show a compelling state interest for differentiating between residents and nonresidents. Application of the stricter equal protection standard, however, was clearly based on the Court's determination that the welfare requirement placed a burden on the right to travel. The state statute had to be strictly scrutinized only because it impinged on an independently protected constitutional right. In our case, no independent constitutional right of the plaintiffs has been infringed. Plaintiffs merely rely on the asserted denial of equal protection.

Plaintiffs' other cases are inapplicable for similar reasons. In *Levy* v. *Louisiana*, *supra*, the strict scrutiny standard was applied because "a basic civil right" was involved and because the statute under review was discriminatory on its face. In *Harper* v. *Virginia Board of Elections*, *supra*, and in *Carrington* v. *Rash*, *supra*, the statutes there invalidated placed a burden on the constitutional right to vote. The rationale of these cases is consistent with the rule announced in *Shapiro*, and therefore inapplicable here. The Texas welfare laws before us place no burden on any independent constitutional right of the plaintiffs. As already noted, there is presently no constitutional right to welfare assistance. Welfare "is a gratuity from the state made to those whose status and condition . . . show an urgent need for financial aid. . . ." *Sweeny* v. *State Board of Public Assistance*, *supra*.

States consequently have considerable freedom to determine the levels of welfare assistance. As said recently by the Supreme Court in *King* v. *Smith*, 392 U.S. 309, 318 (1968):

> "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program."

Our view that plaintiffs' claim must be determined by traditional equal protection standards is fortified by the recent Supreme Court decision in *McDonald* v. *Board of Election Com. of Chicago*, 22 L. Ed. 2d 739 (1969). The *McDonald* case involved the right of unsentenced inmates of a Cook County jail to appear personally at the polls in order to vote. Chief Justice Warren, writing for a unanimous court, rejected the argument that the compelling state interest theory was applicable. In so concluding, the Court extensively analyzed the two standards of equal protection. In our view that analysis, which we here reproduce, conclusively demonstrates the inapplicability of the stricter standard to the case at bar:

> "Before confronting appellants' challenge to Illinois' absentee provisions, we must determine initially how stringent a standard to use in evaluating the classifications made thereunder and whether the distinctions must be justified by a compelling state interest; for, appellants assert that we are dealing generally with an alleged infringement of a basic, fundamental right. See, e.g., Reynolds v. Sims, 377 US 533, 12 L Ed 2d 506, 84 S Ct 1362 (1964); Harper v. Virginia State Board of Elections, 383 US 663, 16 L Ed 2d 169, 86 S Ct 1079 (1966). Thus, while the 'States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised,' Lassiter v. Northampton County Board of Elections, 360 US 45, 50, 3 L Ed 2d 1072, 1076, 79 S Ct 985 (1959), we have held that once the States grant the franchise, they must not do so in a discriminatory manner. See

Carrington v. Rash, 380 US 89, 13 L Ed 2d 675, 85 S Ct 775 (1965). More importantly, however, we have held that because of the overriding importance of voting rights, classifications 'which might invade or restrain them must be closely scrutinized and carefully confined' where those rights are asserted under the Equal Protection Clause; Harper v. Virginia State Board of Elections, supra, at 670, 16 L Ed 2d at 174. And a careful examination on our part is especially warranted where lines are drawn on the basis of wealth or race, Harper v. Virginia Board of Elections, supra, two factors which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny. Douglas v. California, 372 US 353, 9 L Ed 2d 811, 83 S Ct 814 (1963); McLaughlin v. Florida, 379 US 184, 192, 13 L Ed 2d 222, 228, 85 S Ct 283 (1964).

"Such an exacting approach is not necessary here, however, for two readily apparent reasons. *First, the distinctions made by Illinois' absentee provisions are not drawn on the basis of wealth or race. Secondly, there is nothing in the record to indicate that the Illinois statutory scheme has an impact on appellants' ability to exercise the fundamental right to vote.* It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots. Despite appellants' claim to the contrary, the absentee statute, which are designed to make voting more available to some groups who cannot easily get to the polls, do not themselves deny appellants the exercise of the franchise; nor, indeed, does Illinois' Election Code so operate as a whole, for the State's statutes specifically disenfranchise only those who have been convicted and sentenced, and not those similarly situated to appellants. Ill Rev Stat, c 46, §§ 3-5 (1968). Faced as we are with a constitutional question, we canont lightly assume, with nothing in the record to support such an assumption, that Illinois has in fact precluded appellants from voting. We are then left with the more traditional standards for evaluating appellants' equal protection claims,

Though the wide leeway allowed the States by the Fourteenth Amendment to enact legislation that appears to affect similarly situated people differently, and the presumption of statutory validity that adheres thereto, admits of no settled formula, some basic guidelines have been firmly fixed. The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside *only if no grounds can be conceived to justify them.* See McGowan v. Maryland, 366 US 420, 6 L Ed 2d 393, 81 S Ct 1101 (1961); Kotch v. Board of River Port Pilot Commissioners, 330 US 552, 91 L Ed 1093, 67 S Ct 910 (1947); Lindsley v. Natural Carbonic Gas Co, 220 US 61, 55 L Ed 369, 31 S Ct 337 (1911). With this much discretion, a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' Williamson v. Lee Optical of Oklahoma, Inc., 348 US 483, 489, 99 L Ed 563, 573, 75 S Ct 461 (1955); and a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. See Ozan Lumber Co. v. Union County National Bank, 207 US 251, 52 L Ed 195, 28 S Ct 89 (1907)." (Emphasis added)

IV.

SECTION 402(a)(23) OF THE SOCIAL SECURITY ACT

The third issue in this case is whether the present AFDC plan in Texas violates the requirements of § 402 (a)(23) of the Social Security Act, 42 U.S.C. § 602(a)

(23). This section, which was amended on January 2, 1968, provides in pertinent part that

> by July 1, 1969 the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

We do not see how this could mean anything except that the standard of assistance and the maximums imposed must be proportionately raised.

Under the Texas plan in effect on January 2, 1968, there was a maximum on grants paid to recipients of AFDC depending upon the number of children in the family. These maximum limits were as follows:

1 child and caretaker $72.00 per month
2 children and caretaker $93.00 per month
3 children and caretaker $114.00 per month
4 children and caretaker $135.00 per month

Regardless of the number of children in the family $135.00 was the maximum paid. Effective September 1, 1968 there was a cut across the board of $12.00 for each family, so that the maximum regardless of the number of children was $123.00.

On February 28, 1969, Defendants issued a new statewide administrative order known as Executive Letter E-430 and Executive Letter E-434. This order directed that beginning on May 1, 1969, the following changes in Texas welfare procedure were to become effective: 1) the standard of need for AFDC recipients was to be raised 11% to reflect the rise in the cost of living, 2) maximums on AFDC payments were to be removed, and 3) grants were to be calculated by multiplying the newly adjusted standard of need by 50%. The order declared that Texas was unable at the present time to meet any more than 50% of the calculated need of AFDC recipients. Its result was to increase benefits for 14,000 Texas families (the larger families no longer subjected to maximums), decrease benefits for 22,812 families, and totally eliminate

2,470 families from the AFDC rolls. The following is a comparison of the manner in which allowable needs and payable benefits were calculated prior to and after May 1, 1969, when the new plan went into effect. Figures are based on the needs of a family of five, one caretaker and four children:

	Old Plan	New Plan
Adult's personal needs	$ 45.00	$ 65.00
Children's (4) personal needs	84.00	100.00
Housing	44.00	49.00
Special needs	5.00	
Total recognizable needs	$178.00	$214.00
Payable benefits	$123.00	$107.00

As is readily apparent from this table, under the old plan $123.00 was the maximum amount that was paid. Under the present plan, there is a 50% reduction of the total recognizable needs, resulting in a payment of $107.00, or a $16.00 reduction in payments for a family of 4 children. Despite this reduction, HEW has approved the Texas plan as conforming to the requirements of § 402(a)(23). In approving the plan, HEW was acting pursuant to an administrative regulation which interpreted § 402(a)(23) to mean that a state plan for AFDC must:

> ". . . provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted . . . . In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions in accordance with subparagraph (3)(viii) of this paragraph. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards."

After careful examination of the above regulation, and of the Texas plan approved pursuant thereto, we are of the view that neither carries out the intent and purpose of § 402(a)(23). Texas and HEW maintain that the mandate of § 402(a)(23) is satisfied by an increase in the standard of need and a simultaneous reduction in the percentage of need actually paid. They argue, in effect, that the statute is not a command to pay more, but a command to make a bookkeeping entry regarding costs of living increases which would instantly be nullified by the payment of the lesser percentage of the book entry. This is a cipher game. We are of the opinion that Congress intended no such academic exercise. We believe instead that Congress desired to increase the size of grants actually reaching AFDC recipients so as to minimize the effect of the rise in the cost of living. Such an interpretation is more consistent with both the language of the statute and with common sense. As said by Judge Cassibry in *Lampton* v. *Bonin*, —— F. Supp. —— (E.D. La. 1969) (dissenting opinion):

> "ADC [AFDC] payments in all states are predicated upon the need standard; if this standard is increased as section 402(a)(23) requires, the budgetary deficit must also increase accordingly. In those states paying the budgetary deficit in full, as well as in those states that pay only a percentage of the budgetary deficit (or the standard of need) section 402(a)(23) necessarily requires increased ADC [AFDC] grants corresponding to the increase in the standard of need; for a percentage maximum (100 per cent or less), kept constant, automatically translates increased need into an increased payment. Similarly, in those states imposing an arbitrary dollar maximum on the size of the assistance grant, section 402(a)(23) by requiring that the maximums imposed be adjusted in accordance with the change in the cost of living, insures increased grants for all recipients. Regardless of which system of computing ADC [AFDC] payments the state follows, section 402(2)(23) is therefore designed to effectuate increased

> ADC [AFDC] recipient grants. The language of the statute could not be any clearer."

We note that the interpretation of § 402(a)(23) and the Congressional intention behind its enactment have been extensively examined and debated by other courts. *Rosado* v. *Wyman*, —— F.Supp. —— (E.D.N.Y. 1969), *reversed*, —— F.2d —— (2 Cir., July 17, 1969) (dissenting opinion, Feinberg, J.); *Lampton* v. *Bonin*, —— F.Supp. —— (E.D. La., April 15, 1969) (hereinafter referred to Lampton I); *Lampton* v. *Bonin*, —— F.Supp. —— (E.D. La., July — 1969) (hereinafter referred to as Lampton II). In each of these cases judges have disagreed as to the meaning of § 402(a)(23), and have exhaustively analyzed its purpose and derivation. We see no useful purpose in reiterating their arguments here. We find, however, in Judge Cassibry's opinion in *Lampton II* an excellent survey of the arguments for and against our interpretation of the statute and we therefore append it to this opinion. The painstaking analysis of the statute there presented is substantially our own. We deem it appropriate, however, to add a few words to the already extensive pages of this debate.

Judge Wisdom, speaking for the Majority in *Lampton II*, has noted that the legislative history of § 402(a)(23) does not seem to indicate that Congress contemplated a large increase in AFDC payments. He observes, among other things, that insufficient attention was paid by Congress to the fiscal implications of mandating increased payments. From this he concludes: "Clearly, no great cost effect was anticipated".

Respectfully, we must disagree. The difficulty with this analysis is that the operative date of the statute (as opposed to its effective date) is July 1, 1969. When the amendment to the statute was passed on January 2, 1968, there still remained 18 months before any increase in payments would be required. The matter of appropriations, therefore, would, in the normal course of events, come before the Congress in the early calendar months of 1969 and was not ripe for consideration in late 1967. Congress does not normally indulge in fiscal prescience.

In support of his position, Judge Wisdom relies on the Summary of Social Security Amendments of 1967, a Committee Print of a Joint Publication of the Senate and House Committees (90th Cong., 1st Sess., December, 1967). He notes that on page 28 of the print, no cost figures appear for AFDC cost of living increases. He argues that this omission supports his position that no increased payments were contemplated.

We read the table as including only those costs which were reasonably predictable. If Table 5 was to be anticipative of all future expenditures under the Act, we cannot perceive why some figure was not included for those states (an estimated number perhaps) that would raise their payments and not merely their standards. Did this table operate on the premise that all states would play the cipher game? A realistic answer might be that expenditures commencing eighteen or more months later in a field of variables do not furnish a fertile basis for legislative projections and thus such projections were not essayed by the authors of the table.

We find nothing in the legislative history of § 402(2)(23) which precludes the interpretation that this amendment was aimed at increased payments. On the contrary, we find that in terms of its language, purpose, and legislative history, § 402(a)(23) requires that Texas, in order to conform to the statute, must adjust upwards its AFDC payments to fully reflect the 11% rise in the cost of living. The basis for such adjustment is the level of payments on January 2, 1968, with appropriate allowance for the Congressional mandate that "maximums be proportionately adjusted." [7]

V.

CONCLUSION

While we are dismayed at the comparative compassion involved in granting 100% of need to adults and 50%

[7] It should be noted that the Texas Welfare plan in force on January 2, 1968, had AFDC maximums similar to those in other states which have been held unconstitutional. *Williams* v. *Dandridge*, 297 F.Supp. 450 (D. Md. 1969); *Westberry* v. *Fisher*, 297 F.Supp. 1109 (D. Maine, 1969); *Dews* v. *Henry*, 297 F.Supp. 587 (D. Ariz. 1969).

to children, and while we are disconcerted by the apparent insensitivity in being more concerned with self-help for the aged than food and lodging for the young, we cannot say that these indifferent differentiations are so irrational as to be constitutionally impermissible. A rationale for the distinction exists, unbenevolent though it be.

We are also convinced that Congress did not see Section 402(a)(23) as a mirage, but rather signaled a hope that the children would be granted the fact of an increased payment and not the fiction of an increased standard.

For the reasons stated we hold that the present AFDC plan (E-430 and E-434) in Texas violates the requirements established by § 402(a)(23) of the Social Security Act and that defendants should be enjoined from implementing such plan.

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Civil Action No. 68-2092

Section "E"

SHIRLEY LAMPTON, ET AL., PLAINTIFFS

versus

GARLAND L. BONIN, ET AL., DEFENDANTS

Before WISDOM, Circuit Judge, and CASSIBRY and COMISKEY, District Judges.

CASSIBRY, District Judge, dissenting:

Waving the banner of "cooperative federalism," with the accent on states' rights, and adopting an interpretation of section 402(a)(23) of the Social Security Act of 1935 that stresses the precise words of the statute to the exclusion of Congress' clear purpose in enacting it; that emasculates the meaning of the statute to the extent that it is rendered an absurdity, a nonentity, a futile exercise of the legislative will; and, most significantly, that ignores the urgent need for increased assistance payments which Congress sought to meet, this court casts aside plaintiffs' contention that section 402(a)(23) requires Louisiana to increase ADC grants. I must dissent.

The question for the court is what Congress meant when it added section 402(a)(23) to the Social Security Act, 42 U.S.C.A. § 602(a)(23) (Supp. 1969), which requires that any state plan for Aid to Dependent Children (ADC) must:

> provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any

maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted.

In my dissenting opinion in *Lampton* v. *Bonin*, —— F. Supp. ——, —— (E. D. La. 1969) (hereinafter referred to as *Lampton I*), I found it necessary to consider this question and, after reviewing the language of the statute and the legislative history, concluded that Congress intended to require the states to increase ADC payments by the change in the cost of living since the existing level of payments was established. Nothing the majority say has made me change my mind; in fact, their inability to provide the statute some reasonable meaning only enhances my belief in the correctness of my original interpretation of the statute, not to mention its acceptance and refinement by Judge Weinstein in *Rosado* v. *Wyman*,[1] —— F. Supp. —— (E.D.N.Y. 1969), and the subsequent adherence of the three-judge district court in *Jefferson* v. *Hackney*, —— F. Supp. —— (N.D. Texas 1969). But before restating the position taken in my previous dissent, I should first like to delineate the errors inherent in the majority's analysis of section 402(a)(23), and dispel any notion that Congress primarily meant what the majority purport to find in the statute.

I. *SUGGESTED EFFECTS OF SECTION 402(a)(23)*

The majority contend that section 402(a)(23) is not meaningless, and has three possible effects apart from the increased payments contended for by plaintiffs.

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[1] June 6, 1969, the Court of Appeals for the Second Circuit, in a 2-1 decision, stayed the District Court's preliminary injunction restraining New York's Commissioner of Social Services from implementing and putting into effect reductions in ADC payments pending disposition of an appeal from Judge Weinstein's decision. June 23, 1969, the Supreme Court denied a writ of certiorari before judgment. 37 U.S.L.W. 3492. Inasmuch as jurisdictional questions complicate *Rosado*, the grounds for the stay are uncertain, and until publication of a written opinion, its issuance cannot be viewed as having any reflection on the merits.

A. *Increase the Standard of Need*

One such effect is to increase the standard of need by the change in the cost of living so as to make additional persons (those with marginal incomes) eligible for ADC payments and concomitant social welfare services. This is certainly a laudable objective, well within the power of Congress, obviously an incidental side effect of section 402(a)(23), but cannot be what Congress principally had in mind when it enacted this particular amendment. This is amply evidenced by the majority's unsuccessful attempt to find support in the legislative history for some indication that Congress intended expanded eligibility as the purpose of the statute.

In support of this contention, the majority rely upon the other provisions enacted along with section 402(a)(23), and argue that inasmuch as these were meant to provide ancillary services in order to strengthen family life, section 402(a)(23) must do likewise. From this the majority conclude, without giving due consideration to the independent legislative history of section 402(a)(23), that Congress intended section 402(a)(23) "to make additional persons eligible for AFDC payments as well as for concomitant services." This argument must be rejected.

Section 402(a)(23) has a legislative history of its own, separate and apart from that of other provisions of the 1967 Social Security Amendments, and so long as its purpose, as revealed by this history, is not inconsistent with the other provisions and in need of reconciliation therewith, it must be judged alone. Further, because section 402(a)(23) includes numerous unrelated ADC program requirements which states must fulfill if they are to be entitled to receive federal financial assistance, no basis exists for limiting the scope or intent of one such requirement by another unless they are in potential conflict with or overlap each other, which has clearly not been shown to be the case here.

In discussing the legislative history in order to find support for their position, the majority fail to consider that Congress enacted at the same time as section 402(a)(23), and in the very same bill, a limitation on federal

matching funds,[1a] only recently repealed, whose intended effect was to induce the states to tighten their eligibility standards and reduce the number of individuals receiving ADC payments—the exact opposite of the intent which the majority seek to attribute to Congress by its passage of section 402(a)(23). *See Lampton I, supra* at —, note 19; H. Rep. No. 544, 90th Cong., 1st Sess., at 110 (1967). Are we to assume, then, as the majority would have it, that Congress engaged in a tug-of-war with itself? Or are we to conclude, as is certainly more reasonable, that Congress did not legislate section 402(a)(23) in order to expand eligibility for ADC?

Finally, by suggesting that increased eligibility was one of Congress' primary concerns when it enacted section 402(a)(23), the majority go beyond the position maintained by HEW in support of the defendants' position. For although HEW initially propounded this argument in its brief amicus curiae filed in connection with *Lampton I*, it was later dropped from its brief submitted in *Jefferson* v. *Hackney*, *supra*, and for the very good reason that Texas, following HEW's interpretation of the statute in 45 C.F.R. § 233.20(a)(ii), 34 Fed. Reg. 1394 (1969), applied its ratable reduction to the standard of need, rather than the budgetary deficit as in Louisiana, and thus reduced the number of persons eligible for ADC grants. That Louisiana chose to follow a different procedure, thus spreading its limited funds among a greater number of needy families, is of course immaterial to discerning Congress' intent regarding section 402(a)(23). What is material is that a state, consistent with this provision, may if it chooses, reduce the number of persons eligible for ADC payments.

In sum, we must conclude that while an increase in the standard of need would in most cases lead to an increase in the number of persons eligible to participate in the ADC program, this was not the sole or principal intent of Congress when it enacted section 402(a)(23).

[1a] *See* section 208(b) of the 1967 Social Security Amendments, which added section 603(d)(1) of the Social Security Act, 42 U.S.C.A. § 603(d)(1) (Supp. 1969). *See also* Pub. L. 90-364, 90 Stat. 273 (1968), which delayed the effective date of the limitation until July 1, 1969.

B. *Elimination of Maximums*

As a second intended effect of section 402(a)(23), the majority suggest that Congress hoped to induce the states to eliminate the use of arbitrary dollar maximums restricting the size of assistance grants and to substitute other, more equitable forms of holding down welfare expenditures which effect all families proportionately, such as a ratable reduction system. To effectuate this purpose, the majority say Congress required in section 402(a)(23) that dollar maximums be increased proportionately to the change in living costs. Thus, according to their logic, a state is confronted with the choice of either increasing its maximums, and hence its payments, or abandoning its maximums and shifting to a system of ratable reductions.

No legislative history is cited in support of this proposition, because none exists. At no time during consideration and passage of the 1967 Amendments did Congress ever express any interest in doing away with maximums, not even those discriminating against large families, which are the most objectionable, and have since been declared unconstitutional by several federal courts. *See Westberry* v. *Fisher*, 297 F. Supp. 1109 (D. Me. 1969); *Davis* v. *Henry*, 297 F. Supp. 587 (D. Ariz. 1969); *Williams* v. *Dandridge*, 297 F. Supp. 450 (D. Md. 1968). Moreover, if Congress did wish to encourage the states to eliminate maximums, we must seriously question whether it would "have so beclouded its intent" by being so subtle in method, *Lampton I*, *supra* at —.

Finally, by combining *two unrelated* objectives—expanding eligibility and eliminating maximums—in one amendment to section 402(a)(23), the majority's position is necessarily inconsistent with the internal structure of that provision, which consists of over twenty *single-purpose* state plan requirements.

Clearly, then, lacking any support in the legislative history or the structure of the pertinent section of the Social Security Act, this second proposed purpose cannot be said to have been what Congress had in mind when it legislated section 402(a)(23).

* * * *

Before passing to the third and final effect of the statute advanced by the majority, I feel compelled to comment at this time upon my brethren's "credit[ing the Louisiana Department of Public Welfare] with having eliminated its maximums because of serious doubt as to their validity and not as a backhanded way of avoiding the necessity of increasing the maximums (payments) to reflect the rise in cost of living." Such praise is inappropriate.

At least since October 1968 it has been public knowledge that Louisiana was having difficulty financing its ADC program. This lawsuit as initially brought manifested that problem. But an unexpected windfall in June 1969 of federal funds enabled the state to maintain its level of ADC payments for the remainder of that fiscal year. With no such windfall now in sight, and with an appropriation for ADC for the current fiscal year 1969-1970 of only $9,043,000 out of a requested $17,320,000, over $400,000 less than the appropriation for the year before, Louisiana, as both the written interrogatories and oral testimony reveal, had to reduce ADC grants by approximately twelve percent.

In order for the state to make this cut and still comply with requirements of the Social Security Act as interpreted by HEW and now by this court, a ratable reduction system was adopted. Consistant with this change, *all* maximums were eliminated as no longer necessary, not just the "family maximum," which treats families with six or more dependent children less favorable than families with a lesser number of dependent children, and which is the only kind of maximum yet attacked by the courts.

To praise Louisiana's action as respect for an impending constitutional mandate, and thus place a constitutional rather than a political imprint upon the act, is therefore not only to belie the scope of the mandate itself, which is limited to family maximums, but also to disregard what has been readily apparent for months, that Louisiana must somehow reduce its ADC outlays.

C. *Emphasize Disparity Between Need and Payment*

For Congress' third possible purpose in enacting section 402(a)(23), the majority indicate that if this provision "does nothing else, it spotlights the difference between the amount a state has determined to be the need of its dependent children and the amount its legislature has appropriated to meet the need along with federal funds."

In response no more need be said than to ask: Were this provision in fact meant to be so ineffectual as to the states, why were they given *eighteen* months in which to implement it, and why did the Senate-House Conference Committee find it so important to delete the requirement that the cost of living adjustment be made annually? *See* Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 3179, 3209 (1967).

* * * *

If the aforementioned three purposes for Congress' enactment of section 402(a)(23) constitute the most forceful attempt possible to give meaning to the statute apart from that for which plaintiffs contend, this effort itself calls into question the viability of the majority's interpretation of the statute. Also indicative of the unreasonableness of their position are the plain meaning of the language of section 402(a)(23) and the clear course of its legislative history, to which the discussion now turns.

II. *MEANING AND INTENT OF SECTION 402(a)(23)*

A. *Plain Meaning*

In presenting the question for decision, my brethren misconceive the statute by dividing it into two separate and independent Congressional mandates, notwithstanding Congress' consideration and enactment of the provision as a unified whole.[2] As they see it, the issue before the court

[2] The majority quote the text of section 402(a)(23) in this manner.

> "A state plan for aid and services to needy families with children must . . . provide that by July 1, 1969, [1] the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since

is "whether the *second clause* of section 402(a)(23) * * * prohibits the State from decreasing its ADC payments to reflect fully the changes in living costs * * *." (Emphasis added.)

Obviously, this seriously misconstrues the statute and misstates the issue, for we are not deciding the effect of solely the first clause or solely the second clause of section 402(a)(23), but the effect of the statute *as a whole.* And when read as a unified provision, as Congress must certainly have intended—it would not have joined in one amendment such disparate elements as the standard of need and maximums if they were not to be related to a single purpose—it is clear that section 402(a)(23) requires the states to increase the level of ADC payments.

The logic of this position is simple, and requires only a basic understanding of the procedures outlined in the margin which the states use to determine the appropriate amount of ADC recipient grants.[3]

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such amounts were established, [2] any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

It must be noted, however, that it is they, not Congress, who inserted the numbers dividing into two separate parts the compound sentence comprising the statute.

[3] "Each state estimates its standard of need or assistance, which is the minimum monthly amounts required by its needy citizens for food, clothing, shelter, and other necessities. From this low-income budget, which varies according to the size of the family and is different in different states, each state deducts the income of the recipient, subject to allowable exemptions, leaving what is know as a budgetary deficit. In theory the budgetary deficit is the amount of the assistance payment, but in practice many states pay less by imposing arbitrary dollar maximums on the amount of aid paid, by paying only a fixed percentage of the budgetary deficit, or by a combination of both whereby a fixed percentage is paid but only up to a set dollar maximum. Of the fifty-four jurisdictions participating in the ADC program, twenty-four impose neither a percentage nor a dollar maximum, and pay the full budgetary deficit or 100 percent of need. Seven jurisdictions pay a percentage of the budgetary deficit, while four follow a variant and pay a percentage of the standard of need. Finally, twenty-six jurisdictions, including some which impose percentage reductions, place a legal or administrative dollar maximum on the amount that can be paid.

Since we all agree that section 402(a)(23) requires an increase in the standard of need commensurate with the change in the cost of living,[4]

> "[t]o determine the purpose served by this mandate * * *, we need only refer to the universal use of the standard of need as the base for computing the level of ADC recipient grants, and the remaining language of section 402(a)(23), which provides that along with the necessary cost of living changes in need standards, "any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." ADC payments in all states are predicated upon the need standard; if this standard is increased, as section 402(a)(23) requires, the budgetary deficit must also increase accordingly. In those states paying the budgetary deficit in full, as well as in those states that pay only a percentage of the budgetary deficit (or the standard of need), section 402(a)(23) necessarily requires increased ADC grants corresponding to the increase in the standard of need; for a percentage maximum (100 percent or less), kept constant, automatically translates increased need into an in-

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Amounts are stipulated for each additional child, sometimes up to a family maximum expressed in a dollar amount, or cumulative amounts based on a given number of children are used, limited in terms of the number of children or a maximum payment." *Lampton I, supra* at —— (footnotes omitted).

[4] The majority are mistaken when they say: "We all also agree that the State may give less than 100 percent of the standard of need." This was certainly true before enactment of section 402(a)(23) on January 2, 1968, and may well have been true before the July 1, 1969, deadline for compliance (compare the two opinions in *Lampton I*), but is now no longer the case. As will be shown *infra* at ——, those states paying full need (100 percent of the standard of need) on January 2, 1968, even if the ultimate payment was restricted by an arbitrary maximum as in Louisiana, must continue to do so or else violate section 402(a)(23). Only those states which previously provided less than 100 percent of need by way of a percentage reduction system may today pay less than 100 percent of need, but the percentage paid must not of course be reduced below that in existence on January 2, 1968.

> creased payment. Similarly, in those states imposing an arbitrary dollar maximum on the size of the assistance grant, section 402(a)(23), by requiring that the maximums imposed be adjusted in accordance with the change in the cost of living, insures increased grants for all recipients. Regardless of which system of computing ADC payments the state follows, section 402(a)(23) is therefore designed to effectuate increased ADC recipient grants. The language of the statute could not be any clearer." *Lampton I, supra* at —.

This, I submit, is the most reasonable way to read the statute, and the only analysis which respects both the language used and the intent expressed.

B. *Legislative History*

Should any doubts remain regarding the propriety of this interpretation, they are certainly dispelled by the clear course of the legislative history, as surveyed in the following excerpt from my dissenting opinion in *Lampton I, supra* at — (all footnotes have been renumbered):

> "Section 402(a)(23) had its genesis before the Senate Committee on Finance as a proposed amendment by HEW to H. R. 12080, 90th Cong., 1st Sess. (1967), the Social Security Amendments as passed by the House of Representatives. The amendment called for the states to meet need in full as they determined it, and required that the states update their need standards to reflect current prices, and review these standards annually and modify them in accordance with significant changes occurring in the cost of living.[5] *Hearings on H. R. 12080 Before the Sen-*

[5] The text of the proposed amendment follows:

> "[each state plan must provide] (A), effective July 1, 1969, for meeting (in conjunction with other income that is not disregarded, or set aside for future needs, under the plan and other resources) all the need, as determined in accordance with standards applicable under the plan for determining need, of individuals eligible to receive aid to families with dependent children (and such standards shall be no lower than the stand-

ate Committee on Finance, 90th Cong., 1st Sess., pt. 1, at 635 (1967) [hereinafter *Hearings*]. Like provisions were suggested for the adult categorical assistance programs.[6] *Hearings*, pt. 1, at 634-37. These amendments were designed to meet the problem of inadequate and unrealistic assistance payments by compelling increases in the level of payments in all categories.[7]

Although the Committee extensively modified the far-reaching HEW proposals, the provisions reported out and adopted by the Senate, which were discussed in the Section-by-Section Analysis contained in the Senate Report under the heading "Increasing Income of Recipients of Public Assistance," were doubtless intended to ameliorate, though to a lesser degree, the same problem—the low level of assistance grants—in the same manner—requiring the states to increase payments. S. Rep. No. 744, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 2834, 3132 (1967).

The Committee bill rejected the HEW recommendation that the states meet needs in full as they de-

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ards for determining need in effect on January 1, 1967) and (B), effective July 1, 1968, for an annual review of such standards and (to the extent prescribed by the Secretary) for updating such standards to take into account changes in living costs;".

Hearings on H. R. 12080 Before the Senate Comm. on Finance, 90th Cong., 1st Sess. pt. 1, at 635 (1967).

[6] These programs are: Old Age Assistance and Medical Assistance for the Aged, 42 U.S.C. §§ 301-306; Aid to the Blind, 42 U.S.C. §§ 1201-1206; Aid to the Permanently and Totally Disabled, 42 U.S.C. §§ 1351-1355; Aid to the Aged, Blind or Disabled or for such Aid and Medical Assistance for the Aged, 42 U.S.C. §§ 1381-1385.

[7] Testifying in support of the proposed additions to the House bill, Secretary of HEW John W. Gardner and Under-Secretary Wilbur J. Cohen documented the inadequacy of assistance payments, especially in the ADC program, and attributed this principally to the states' desire to limit their financial responsibility. Hearings, pt. 1, at 216 (testimony of John W. Gardner); Hearings, pt. 1, at 255-59 (testimony of Wilbur J. Cohen).

termine them. But it did incorporate the annual cost of living adjustment for the ADC program,[8] and substitute in the adult programs a one-time mandatory average increase of $7.50 per month in the amount of assistance,[9] S. Rep. No. 744, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 2834, 3132 (1967), a change designed to assure that all non-ADC recipients would benefit from the increases.[10] The Senate passed these provisions with-

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[8] The Committee provision required a state plan for ADC to provide that:

> "by July 1, 1969, *and at least annually thereafter*, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and that any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted." (Emphasis added.)

Except for the emphasized language which was deleted by the Conference Committee, this provision parallels that enacted by Congress.

[9] The Committee provision required that non-ADC plans must:

> "provide that the standards used for determining the need of applicants and recipients for and the extent of such assistance under the plan, and any maximum on the amount of assistance, will have been so modified that an increase in the amount of assistance and other income will not be less than $7.50 per month per individual . . . above such amount of assistance and other income available under the standards and maximum applicable under the plan on December 31, 1966."

[10] Since many of the recipients of aid in the adult categories also receive social security benefits, had the cost of living mechanism been used, the intended increase in assistance payments would have been offset for those individuals who are dual beneficiaries by the increase in social security benefits provided by H. R. 12080. (Social security benefits are considered income and serve to reduce the budgetary deficit, which means a reduced assistance grant.) By assuring each recipient an increase of $7.50 per month in his total amount of assistance and other income, this provision avoids any such offsetting effects. Naturally, this device need not have been employed to assure increased grants in the ADC program, because most ADC recipients do not receive social security benefits. Thus, in this program, the cost of living adjustment proposed by HEW could be retained. S. Rep. No. 744, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 2834, 3006-07 (1967). See also 113

out amendment,[11] and sent the bill to a Senate-House Conference Committee to iron out the differences. In the Conference Committee the mandatory $7.50 increase for the adult categories was replaced by a $7.50 disregard of income provision discretionary with the states. (This allows a state, if it chooses, to disregard $7.50 of income when computing the budgetary deficit. The previous figure was $5.00 per month.) Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967), U.S. Code Cong. & Ad. News 3179, 3208-09 (1967). No similar change was made in the ADC provision; it remained mandatory upon the states. But the Conference Committee did not leave the Senate provision requiring increases unscathed, for the annual cost of living adjustment was deleted, thus leaving only a one-time cost of living adjustment before July 1, 1969. *Id.*

Notwithstanding these Conference Committee modifications, it is manifest that the intendment of the Finance Committee and the Senate survived at least with respect to the ADC provision, and that Congress undoubtedly meant what it said in section 402 (a) (23) when it required the states to raise ADC payments. Clearly the course of the provision from

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Cong. Rec. S 16642 (daily ed. Nov. 16, 1967) (remarks of Senator Ribicoff); 113 Cong. Rec. S. 17036 (daily ed. Nov. 22, 1967) (remarks of Senator Randolph).

[11] Senator McGovern proposed the only amendment to section 402(a)(23). It would have substituted a $4.00 per month per individual increase in ADC payments for the cost of living adjustment in need standards. The announced purpose of the amendment was to raise ADC payments, which are considerably lower than those in the adult programs, by the same percentage (eleven percent) as the $7.50 increase in the adult programs. 113 Cong. Rec. S 16963 (daily ed. Nov. 21, 1967) (remarks of Senator Mansfield, who introduced the amendment on behalf of Senator McGovern). In other words, the amendment was designed to insure that in all states—even those where only marginal increases in the cost of living had occurred—ADC recipients obtained the same guaranteed eleven percent increase in their assistance payments as was provided for the adult recipients. The amendment was rejected. *Id.* at S 16964.

its inception before the Senate Committee on Finance until its final passage by Congress allows no other conclusion.

C. *HEW Regulation*

Both the majority and HEW reject the foregoing analysis of the language and history of section 402(a)(23). They argue that the provision does not require increased ADC payments because Congress has intentionally "left open" a method whereby the states can avoid the ostensible effect of the statute to raise payments. This method is set forth in section 233.20(a)(2)(ii) of the HEW Regulations, 45 C.F.R. § 233.20(a)(2)(ii), 34 Fed. Reg. 1394 (1969). The Regulation requires that a state plan for ADC must:

> provide that by July 1, 1969, the State's standard of assistance for the AFDC program will have been adjusted to reflect fully changes in living costs since such standards were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted. In such adjustment a consolidation of the standard (i.e., combining of items) may not result in a reduction in the content of the standard. *In the event the State is not able to meet need in full under the adjusted standard, the State may make ratable reductions* in accordance with subparagraph (3)(viii) of this paragraph [adjustments must be uniform statewide]. Nevertheless, if a State maintains a system of dollar maximums, these maximums must be proportionately adjusted in relation to the updated standards. 45 C.F.R. § 233.20(a)(2)(ii), 34 Fed. Reg. 1394 (1969) (emphasis supplied).

In discussing this regulation, I again draw upon my dissent in *Lampton I*,[12] *supra* at —— (all footnotes have been renumbered).

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[12] The considerable bracketed additions are principally necessitated by Louisiana's having applied its percentage reduction to the budgetary deficit rather than to the standard of need. Although

HEW promulgated this regulation on January 28, 1969 to guide the states in their compliance with section 402(a)(23) and to "make it clear that while States must update their standards, if the States do not have the money to pay according to such standards they may make a ratable reduction * * *." 34 Fed. Reg. 1394 (January 29, 1969).[13] By a ratable reduction HEW means that a state may reduce the need standard [or the budgetary deficit] by whatever percentage it chooses, and then compute the level of ADC grants from this reduced basis, which necessarily leads to a lower grant than that resulting from the application of the provisions of section 402(a)(23). For example, states formerly paying 100 percent of need (usually up to an arbitrary maximum) could add the cost of living increase required by section 402(a)(23) to the standard of need (and [eliminate or] adjust their maximums accordingly), and then change and pay a lesser percentage of the increased need [or budgetary deficit], while states paying less than 100 percent of need could make the necessary cost of living adjustment and then pay a still lesser percentage. Thus, while the standard of need and dollar maximums[14] remain at the increased

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this course was not anticipated in my previous dissent, it does not affect the continued viability of my analysis. Whether the percentage reduction be applied to the standard of need or the budgetary deficit, the necessary effect is to decrease what would otherwise have been increased by the cost of living adjustment, and thus reduce the ultimate payment.

[13] The regulation dealing with section 402(a)(23) was first promulgated in the HEW Interim Policy Statement No. 4, 33 Fed. Reg. 10230 (July 17, 1968). In its initial form the regulation simply restated the statutory provision, thus giving no indication that the effect of the statutory command could be avoided by a ratable reduction.

[14] To emphasize that maximums must indeed the proportionately adjusted in relation to the repriced standard of assistance, and that they could not be adjusted and then reduced because of inadequate funds pursuant to section 233.20(a)(8)(viii) of the Regulations, the last sentence was added to the regulation interpreting section 402(a)(23). Thus, if funds were inadequate, ratable re-

levels mandated by Congress, a state, by following the percentage reduction procedure, could avoid in part or obliterate completely the otherwise necessary and inexorable effect of section 402(a)(23) to raise the level of recipient grants.[15]

[Both the majority and HEW contend] that Congress having devoted so little attention to section 402(a)(23), it should be interpreted literally to mean no more than its words themselves provide. Accordingly, since the provision commands adjustment only in the standard of need and dollar maximums, and does not refer to the percentage reductions permitted in the regulation, it should not be read to preclude them.[16] In other words, [they seek] to infer a Congressional sanction of percentage reductions from the failure to mention them in section 402(a)(23). However, because a percentage maximum kept constant automatically transfers the increase in the standard of need into an increased payment, it is not at all surprising that Congress did not refer to percentage reductions in section 402(a)(23); there simply was no need to in order to achieve the desired increases. Therefore, to translate this omission into an implied Congressional sanction of percentage reductions is unwarranted.

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ductions could be made in relation to the standard of assistance only, not in relation to the maximums. Needless to say, the effect on the level of recipient grants is the same; they are reduced. But, according to HEW, the language of section 402(a)(23) permits one and prohibits the other.

[15] The Texas experience is instructive. From paying 100 percent of need for a family of four, up to a dollar maximum of $102.00, the state, in accordance with the HEW regulation, reevaluated the need standards and substituted a percentage maximum of fifty percent. *See* Texas Department of Public Welfare, Office Memorandum E-430 (Feb. 28, 1969) (effective May 1, 1969). A family of four with a typical calculated need of $180.00 will now receive a monthly payment of $90.00. Prior to imposition of the fifty percent maximum, the same family would have received $102.00. * * * [The Texas policy has been declared in violation of section 402(a)(23) in Jefferson v. Hackney, —— F. Supp. —— (N. D. Tex. 1969) (three-judge court).]

[16] [Footnote deleted.]

In addition, I no longer find any reason to restrict the statutory language "any maximums that the State imposes on the amount of aid paid" solely to dollar maximums. (I did so limit the term in my dissent in *Lampton I*, *supra* at —— note 17, but further reflection has convinced me that a broader reading is consistent with the intent of Congress.) As Judge Weinstein has pointed out, "Section 402(a)(23) speaks of 'any maximum,' not just dollar maximums." *Rosado* v. *Wyman*, *supra* at ——. Inasmuch as a percentage reduction system results in a dollar maximum on the amount of aid given, it is also encompassed by the command of section 402(a)(23). The proportionate adjustment is not, however, made in "the number representing the percentage reduction but, rather, the dollar figure resulting from the application of the percentage to a family's need as determined by the State's standard of need." *Rosado* v. *Wyman*, *supra*.

Thus Louisiana, notwithstanding its elimination of dollar maximums, by now paying less than the 100 percent of need it formerly paid, has reduced the dollar figure resulting from the application of the percentage to a family's need, and therefore has reduced its maximums in violation of section 402(a)(23).

> Furthermore, a percentage reduction [in the standard of need or the budgetary deficit] reduces the necessary effect of [an increase in] the standard of need as effectively as a dollar reduction [in the standard of need], which HEW admits "would fly in the face of the statutory requirement [to update the standard of need], and cannot be accepted." By both methods the result is a decreased standard of need [or budgetary deficit] which leads to a decreased assistance payment. Ever mindful that "That which we call a rose, by any other name would smell as sweet," [17] I must therefore conclude that if a dollar reduction in the standard of need is precluded by implication by section 402(a)(23), a percentage reduction [of either the standard of need or the budgetary deficit] likewise is prohibited.

[17] Shakespeare, Romeo and Juliet, Act II, Scene 2.

> Finally, the HEW interpretation of section 402(a)(23) cannot be accepted for it nullifies the effectiveness of the provision, and a court will "not suppose that Congress intended to enact unnecessary statutory amendments," *Uptagrafft* v. *United States*, 315 F.2d 200, 204 (4th Cir. 1963), or presume "that the legislature intended any part of a statute to be without meaning." *General Motors Acceptance Corporation* v. *Whisnant*, 387 F.2d 774, 778 (5th Cir. 1968).
> * * *
> It is clear, therefore, that the HEW regulation permitting a ratable reduction in the standard of need is violative of the controlling federal statute, and consequently is invalid. *King* v. *Smith*, 392 U.S. 309, 333, 88 S.Ct. 2128, 2141 (1968). While I am fully congnizant that the views of an administrative agency should be given due deference when issues of statutory interpretation arise, *Udall* v. *Tallman*, 380 U.S. 1, 16, 85 S. Ct. 792, 801 (1965), "[t]he administrative ruling in this case was no sooner made than challenged. We cannot be certain how far it was determined by the considerations advanced * * * in its defense in this case. It has hardly seasoned or broadened into a settled administrative practice. * * * [And I] do not think it should overweigh the considerations * * * set forth as to the proper construction of the statute." *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 156, 64 S.Ct. 474, 481 (1944)."

imposed by the federal government upon those states voluntarily participating in this federally-funded program, and consequently is invalid.[18]

(Last paragraph omitted).

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[18] "There is of course no question that the Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid." King v. Smith, 392 U.S. 309, 333, n. 34, 88 S.Ct. 2128, 2141, n. 34 (1963).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

ORDER—Filed August 14, 1969

On the the 7th day of August, 1969, came on for hearing the motion of the Plaintiffs to amend paragraph 5 of the judgment entered in this case on July 1, 1969.

The Plaintiffs and Defendants both appeared by counsel and after consideration of the briefs and argument of counsel it is the opinion of the Court that paragraph 5 should be amended so as to read as follows:

5. Defendants are permanently enjoined from enforcing the Texas Plan E-430 and E-434 providing for payments to recipients of AFDC and are directed, so long as the State has not withdrawn from the program, to formulate and implement a plan which carries out the provisions of 42 U.S.C.A. 402(a)(23).

IT IS SO ORDERED.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL

v.

BURTON G. HACKNEY, ET AL

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL

v.

BURTON G. HACKNEY, ET AL

On this the 26th day of September, 1969, came to be considered the motion of Plaintiffs to amend the judgment of this Court of July 1, 1969, as amended August 7, 1969, so as to render said judgment retroactive by enabling all members of the class represented by Plaintiffs to receive all sums of money denied them by the State of Texas from the date such amounts were reduced. After due consideration, Plaintiffs' motion is hereby denied.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

[Caption Omitted]

NOTICE OF APPEAL

Come now Plaintiffs, Ruth J. Jefferson, Emma Gipson, and Jose A. Vasquez on behalf of themselves, their minor children, and all others similarly situated and hereby give notice of their intention to appeal to the United States Supreme Court the Judgment of July 1, 1969 as amended August 14, 1969 and from the Court's Denial of Plaintiffs' Motion to further amend the Judgment so as to allow for retroactive payments dated September 26, 1969.

This Appeal is taken pursuant to 28 U.S.C. 1253.

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Philadelphia, Pennsylvania 19104

By /s/ Douglas R. Larson

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1345, Misc. Decided May 4, 1970

JEFFERSON ET AL.

v.

HACKNEY ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

PER CURIAM.

The motion for leave to proceed *in forma pauperis* is granted. The judgment is vacated and the case is remanded to the United States District Court for the Northern District of Texas for further consideration in light of *Rosado* v. *Wyman*, 397 U. S. 397.

SUPREME COURT OF THE UNITED STATES

No. 1345 Misc. October Term, 1969

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Northern District of Texas for further consideration in light of Rosado v. Wyman, 397 U.S. 397.

May 4, 1970

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL.

v.

BURTON G. HACKNEY, ET AL.

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

JUDGMENT

This action came on for hearing on Defendants' motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed of Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges. That on the 1st day of July, 1969, the Court entered a judgment in the above styled and numbered cause, and thereafter on the 7th day of August, 1969, amended Paragraph V of such judgment. That thereafter, on the 4th day of May, 1970, pursuant to an appeal of the foregoing judgment to the United States Supreme Court, the United States Supreme Court vacated and remanded the judgment in this case so that it could be conformed to the United States Supreme Court's decision in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970, in Cause No. 540, October Term, 1969.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed therein, the argument of counsel and the decision by the United States Supreme Court in the instant proceeding, as well as Rosado, et al. v. Wyman, et al., decided April 6, 1970, it is ORDERED, ADJUDGED and DECREED:

1. That the judgment heretofore entered by this Court on the 1st day of July, 1969, and amended thereafter on the 7th day of August, 1969, is hereby vacated and set aside, and that this judgment be entered in lieu thereof.

2. Defendants' motion to dismiss Ruth Jefferson as a party Plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party Plaintiff.

3. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

4. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

5. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

6. The Defendants herein have adjusted the recognized needs of recipients of the AFDC program administered by the State of Texas to reflect changes in the living costs since such amounts were established. That such action on the part of the Defendants is in compliance with Section 402(a)(23) of the Social Security Act, 42 U.S.C.A. § 402(a)(23).

7. The Texas state-wide plan known as E-434, effective May 1, 1969, which allows the Defendants to pay a percentage of the recognized needs of AFDC recipients is not in conflict with the requirements established by the Congressional Amendment 42 U.S.C.A. 402(a)(23) and is in conformity with the decision of the United

States Supreme Court in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970.

8. The injunctive relief sought by the Plaintiffs is hereby denied.

Dated this 4th day of August, 1970.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

[Caption Omitted]

MOTION TO AMEND JUDGMENT

TO THE HONORABLE IRVING L. GOLDBERG, SARAH T. HUGHES, and W. M. TAYLOR, JR.

For the reasons set forth in the letter accompanying this Motion, Plaintiffs respectfully move the Court to amend and modify, pursuant to Rule 59(e) of F.R.C.P., Paragraphs 7 and 8 of the Judgment in this case, dated August 4, 1970, to read:

(7) The Texas statewide plan known as E-434 and subsequent regulations and interpretive bulletins thereof, are in substantial conflict with the requirements established by the Congressional Amendment 42 U.S.C.A. 402 (a) (23) and is contrary to the decision of the United States Supreme Court in *Rosado, et al* v. *Wyman, et al*, decided on the 6th day of April, 1970, in that it results in a reduction in the number of persons eligible to receive AFDC benefits. This is accomplished by applying the "percentage control factor" to the "total of budgetary allowances" (actual standard need) *before* subtracting "available income" to determine the "deficit of unmet need" (amount of grant). This allows Texas to avoid its requirement to "recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and placing them among those eligible for the care and training provisions . . ." of the Act —— U.S. 25 LED 2d at 456 (1970). See also footnote 13.

The "percentage control factor", while an acceptable method of reducing the actual *level* of benefits paid, must be applied to the unmet budgetary deficit *after* available income, if any, has been subtracted from the standard of ("total of budgetary allowances") in order to insure compliance with 42 U.S.C.A. 402(a)(23) as interpreted by the Supreme Court in *Rosado, supra.*, i.e. "non-compliance with § 402(a) (23) may result in limiting the welfare rolls unduly and thus challenging the matching fed-

eral grants in a way not intended by Congress." *Rosado*, 25 LED 2d 442 at 460.

(8) The State of Texas is hereby enjoined from applying the statewide plan known as E-434 in calculating AFDC grants as long as federal monies are used in making AFDC payments and the effect of this injunction is hereby stayed for 30 days from August 1, 1970, at which time the Defendants shall have submitted to this Court and to Plaintiffs a statewide plan which is in compliance with 42 U.S.C.A. 402(a) (23) and *Rosado*, et al, v. *Wyman*, et al, *supra*.

Dated this 14 day of August, 1970.

Respectfully submitted,

/s/ Ed J. Polk
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* * * *

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Legal Services
[Emblem]
For Those In Need

August 14, 1970

Honorable Irving L. Goldberg
United States Circuit Judge
United States Courthouse
Dallas, Texas 75221

Honorable Sarah T. Hughes
United States District Judge
of the Northern District of Texas
United States Courthouse
Dallas, Texas 75221

Honorable William M. Taylor, Jr.
United States District Judge
of the Northern District of Texas
United States Courthouse
Dallas, Texas 75221

RE: Civil Action No. CA-3-3012-B,
Jefferson v. Hackney, and
Civil Action No. SA-69-CA-76
Davila, et al v. Hackney, et al

Dear Judges Goldberg, Hughes and Taylor:

Enclosed with this letter is a motion requesting the Court to amend and modify, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Paragraphs 7 and 8 of the Judgment in this case entered on August 4, 1970. We wish briefly to outline our reasons for the motion in this letter.

The Texas plan known as E-434 has the effect of making thousands of needy AFDC recipients *totally ineligible* for

AFDC public assistance. This is accomplished by reducing the total needs of a family which has some outside income by the percentage reduction factor *before* subtracting that income from the total needs. This is clearly a device used by Texas to avoid its requirement to "recognize and accept responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions . . ." of the Act Rosado, et al v. Wyman, et al, —— U.S. ——, 25 L.Ed 2d 442 at 456 (1970).

The "percentage control factor", while an acceptable method of reducing the actual *level* of benefits paid, must be applied to the unmet budgetary deficit *after* available income, if any, has been subtracted from the standard of need ("total of budgetary allowances") in order to insure compliance with 42 U.S.C.A. 402(a)(23) as interpreted by the Supreme Court in *Rosado, supra*, i.e., "non-compliance with § 402(a)(23) may result in limiting the welfare rolls unduly and thus channeling the matching federal grants in a way not intended by Congress." *Rosado*, 25 L.Ed 2d, 442 at 460.

Clearly Justice Harlan, in his opinion contemplated the above method of calculating the budgets for those states choosing to use the percentage reduction method. See footnote 13. The method used by the State of Texas is absolutely contrary to the Supreme Court's interpretation of 42 U.S.C.A. 602(a)(23) in that it allows the State to absolutely ignore the existence of thousands of needy Texas families.

Justice Harlan said in the third paragraph of Sec. C. in *Rosado*:

> We think two broad purposes may be ascribed to § 402: First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis. Consistent with this inter-

> pretation of § 402, a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need.

Certainly, Texas is not facing up realistically to the magnitude of the public assistance requirement and laying bare the extent to which their programs fall short of fulfilling actual need, by ignoring the existence of thousands of needy families. Congress did not intend that the States response to 42 U.S.C. 602(a)(23) would be to kick people off the welfare rolls.

The attached tables show the contrast between Texas Plan E-434, and the plan which Plaintiffs feel was contemplated by the Act and required by the Supreme Court.

We respectfully move this Court to modify its judgment accordingly.

Yours very truly,

/s/ Ed J. Polk
ED J. POLK
Attorney at Law

EJP:h

Attachments Enclosed

Program under the supervision of Dallas Legal Services Foundation, Inc., funded by local contributions and a grant to the Dallas County Community Action Committee, Inc., from the Office of Economic Opportunity.

TABLE A

Adult and two (2) children with non-exempt family income of one hundred, twenty-five dollars ($125.00).

TEXAS PLAN E-434

$ 65.00	Adult's Personal Needs
50.00	Children's Personal Needs
42.00	Housing
157.00	TOTAL NEEDS
.75	Percentage Reduction Factor
117.75	Recognized Budgetable Needs
—125.00	Net Family Income
NO GRANT—No Medicaid Benefits	

PLAINTIFFS' PROPOSED PLAN
(COMPLYING WITH *ROSADO V. WYMAN*, 42 USC 602(a)(23) and H.E.W. STATE LETTER NO. 1074)

$ 65.00	Adult's Personal Needs
50.00	Children's Personal Needs
42.00	Housing
157.00	TOTAL NEEDS
—125.00	Net Family Income
32.00	Budget Deficit
.75	Percentage Reduction Factor
$ 24.00	GRANT—Plus Medicaid Benefits

TABLE B

The following table illustrates the disasterous effect on AFDC families whose grants are calculated according to Texas Plan E-434 as compared to Plaintiffs' proposed plan:

Number of Children	Net Family Income	Grant According to Texas Plan E-434[1]	Grant According to Plaintiffs' Proposed Plan[2]
1	$100	$0	$24
1	125	0	5
2	125	0	24
2	150	0	5
3	150	0	24
4	175	0	29
4	200	0	11
5	200	0	29
5	225	0	11
6	200	0	48
6	225	0	29
6	250	0	11
7	225	0	48
7	250	0	29
7	275	0	11
8	250	0	48
8	275	0	29
8	300	0	11
9	275	0	48
9	300	0	29
9	325	0	11
10	275	0	67
10	300	0	48
10	325	0	29
11	300	0	67
11	325	0	48
12	325	0	67

[1] Under the Texas Plan, these families receive no Medicaid Benefits.

[2] Receive Medicaid Benefits.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action 3-3012-B

RUTH J. JEFFERSON, ET AL.

v.

BURTON G. HACKNEY, ET AL.

Civil Action 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

ORDER OVERRULING MOTION TO AMEND JUDGMENT

On this the 23rd day of September, 1970 came on the motion of Plaintiffs to amend the judgment in the above case. After considering the motion and the briefs of Plaintiffs and Defendants

It is ORDERED, ADJUDGED and DECREED that said motion to amend the judgment be and is hereby overruled.

/s/ Irving L. Goldberg
Circuit Judge

/s/ Sarah T. Hughes
District Judge

/s/ W. M. Taylor, Jr.
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3012-B

JEFFERSON, ET AL

vs.

HACKNEY, ET AL

NOTICE OF APPEAL

Come now Plaintiffs, Ruth J. Jefferson, Emma Gipson, and Jose A. Vasquez on behalf of themselves, their minor children, and all others similarly situated and hereby give notice of their intention to appeal to the United States Supreme Court the Judgment of August 4, 1970, and from the Court's denial of Plaintiffs' Motion to Amend Judgment as to methods of computation of AFDC grants dated September 24, 1970.

This Appeal is taken pursuant to 28 U.S.C. 1253.

/s/ Ed J. Polk
ED J. POLK
Dallas Legal Services
Foundation, Inc.
301 North Market Street
Dallas, Texas 75202

SUPREME COURT OF THE UNITED STATES

No. 70-5064

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

APPEAL from the United States District Court for the Northern District of Texas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 12, 1971

SUPREME COURT OF THE UNITED STATES

No. 70-5064

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

UPON CONSIDERATION of the motion of the appellants for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 12, 1971

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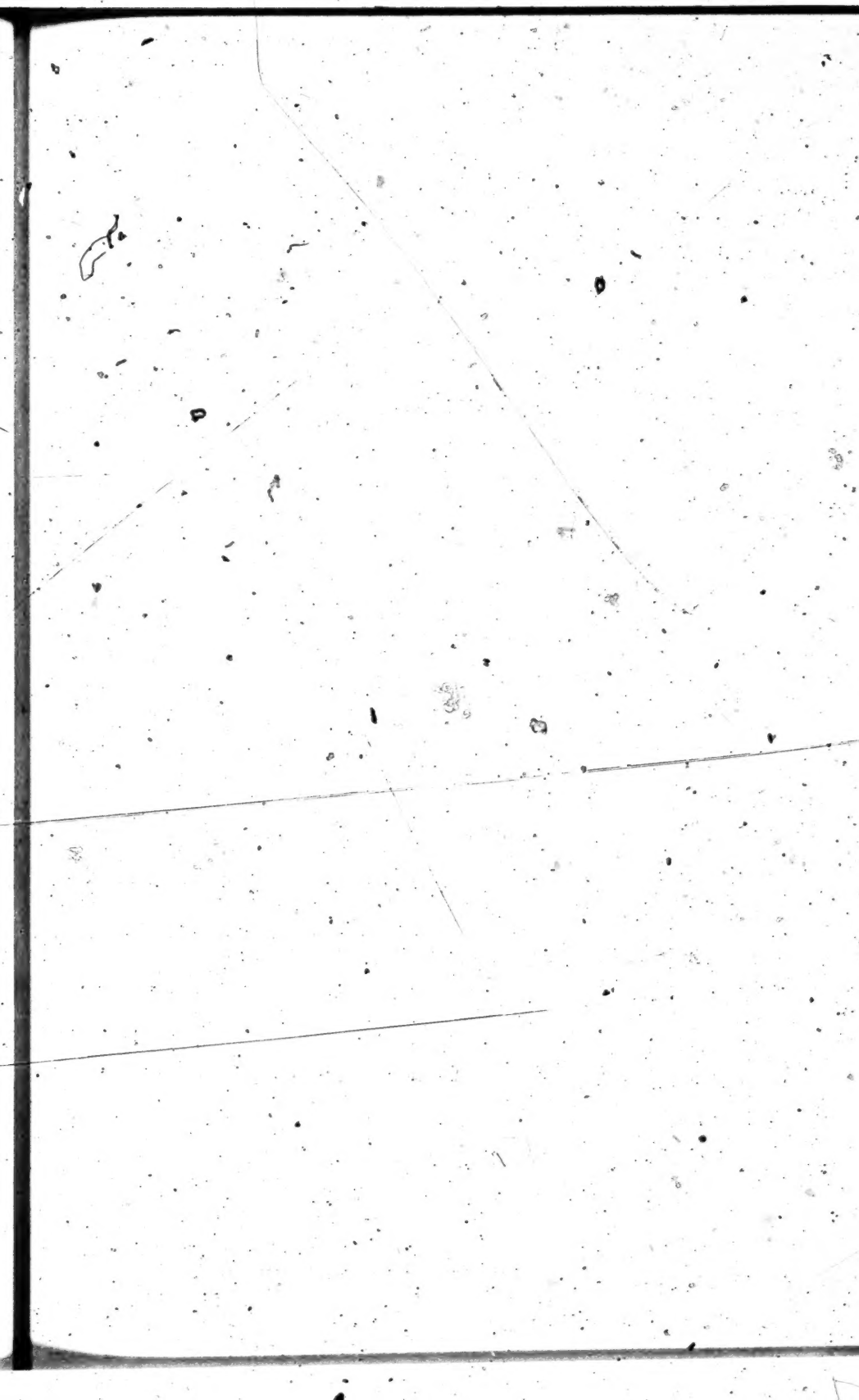

SUPREME COURT, U. S.
MAR 5 1971
E. ROBERT SEAVER, CLERK

NO. 6553

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

70-5064

RUTH J. JEFFERSON, ET AL.,
Appellants

v.

BURTON G. HACKNEY, ET AL.,
Appellees

MOTION TO AFFIRM

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NO. 6553

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

RUTH J. JEFFERSON, ET AL.,
Appellants

v.

BURTON G. HACKNEY, ET AL.,
Appellees

MOTION TO AFFIRM

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Appellees, Burton G. Hackney, Commissioner of the Texas State Department of Public Welfare, Will Bond, Chairman of the Texas State Board of Public Welfare, W. Kendall Baker, Vice-Chairman of the Texas State Board of Public Welfare, Louis Sarazan, Secretary of the Texas State Board of Public Welfare, and Rosalind Giles, Director of Field Staff, Dallas Regional Office of the Texas State Department of Public Welfare, move that the judgment entered by the court below be affirmed on the ground that the questions are so unsubstantial as not to warrant further argument.

STATEMENT OF THE CASE

This action is an appeal by the Petitioners, Ruth J. Jefferson, Emma Gibson and Jose Apolinar Vasquez,

from the judgment entered by the court below on the 4th day of August, 1970, attached hereto as Appendix "A," in a class action commenced by the Appellants against the Appellees, officials of the Texas Department of Public Welfare, wherein the Appellants sought: (1) a declaratory judgment holding invalid certain regulations of the Texas State Department of Public Welfare which reduce AFDC grants: (2) an injunction to restrain the implementation of regulations of the Texas State Department of Public Welfare which restrict the amount of assistance for AFDC recipients to a percentage of unmet budgetary need which is less than that granted to recipients in the other categories; and (3) an injunction prohibiting payments of assistance less than the unmet budgetary needs.

The Appellants are recipients of the Aid to Families with Dependent Children Program (AFDC) administered by the State of Texas through the Texas State Department of Public Welfare pursuant to Article 695c, Vernon's Civil Statutes. The AFDC Program is one of several similar programs for needy persons in the State of Texas which is operated on a cooperative basis with the Federal Government pursuant to the Social Security Act and specifically 42 U.S.C. §601, et seq.

The court below entered judgment in the proceeding on the 1st day of July, 1969, and thereafter on the 7th day of August, 1969, amended Paragraph V of such judgment. See *Jefferson, et al. v. Hackney, et al.*, 304 F.Supp. 1332 (1969). Thereafter, on the 4th day of May, 1970, pursuant to an appeal of the foregoing judgment to the United States Supreme Court, the United States Supreme Court in *Jefferson, et al. v. Hackney, et al.*, No. 1345 Misc., October Term 1969,

vacated and remanded the judgment so that it could be conformed to the United States Supreme Court's decision in *Rosado, et al. v. Wyman, et al.,* 397 U.S. 397 (1970).

On the 4th day of August, 1970, the court below entered its judgment, and from this judgment the Appellants have once again appealed.

OPINION BELOW

The opinion of the United States District Court for the Northern District of Texas, Dallas Division, rendered on the 1st day of July, 1969, is reported as *Jefferson, et al. v. Hackney, et al.,* 304 F.Supp. 1332 (1969). The judgment entered by the court below on the 1st day of July, 1969, is attached as Appendix "B." The amendment to such judgment entered on the 7th day of August, 1969, by the court below, is attached as Appendix "C."

The judgment entered by the court below on the 4th day of August, 1970, pursuant to the remand and instructions by this Court, is attached hereto as Appendix "A."

ARGUMENT

The Appellants in their jurisdictional statement have raised two questions for consideration by this Court. In their initial question, the Appellants are complaining that the judgment entered by the court below on the 4th day of August, 1970, conflicts with 42 U.S.C. §602(a)(23) and the decision of this Court in *Rosado v. Wyman,* 397 U.S. 397 (1970). In addition, the Appellants also challenge, as being in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution, the fact that the Legislature of the State of Texas has seen fit to appropriate less funds, on a per capita basis, for the

operation of the AFDC Program than the per capita funds available in the other categories of welfare assistance—Old Age Assistance Program (OAA), Aid to the Blind Program (AB), and Aid to the Permanently and Totally Disabled Program (APTD).

The Appellees will initially direct their comments to the contentions of Appellants that the judgment entered by the court below does not comply with 42 U.S.C. §602(a)(23) and the decision of this Court in *Rosado v. Wyman*, *supra*.

The Appellants instigated the instant proceeding in an effort to stop the Texas State Department of Public Welfare from implementing certain regulations which would have reduced all AFDC assistance grants by a certain percentage. The action by the Texas State Department of Public Welfare in reducing all AFDC benefits by an across-the-board percentage reduction was necessitated by the rapidly diminishing funds available under current legislative appropriations to meet the enormous increase in recipients of AFDC benefits. The percentage reduction was made by the Texas State Department of Public Welfare to prevent a complete cessation of AFDC benefits to recipients prior to the end of the State's fiscal year and the availability of additional funds.

The court below found that the new regulations of the Appellees (Executive Letter E-430 and Executive Letter E-434) raised the recognized standard of need for AFDC recipients by 11% to reflect the rise in the cost of living as required by 42 U.S.C. §602(a)(23); maximums on AFDC payments were removed; but that because the State of Texas was unable to meet more than 50% of such recognized needs the AFDC benefits would be ratably reduced by such amount. The

court below was of the opinion that 42 U.S.C. §602(a)(23) could not be complied with by the State of Texas by merely increasing the recognized need without actually paying such increase, and therefore the court below held such regulations invalid because they did not actually result in a cost of living increase in grants to AFDC recipients. As the court below stated in its opinion:

> ". . . We believe instead that Congress desired to increase the size of grants actually reaching AFDC recipients so as to minimize the effect of the rise in the cost of living . . ." (Jefferson v. Hackney, supra).

Subsequent to the decision of the court below, this Court decided the case of *Rosado v. Wyman, supra,* and on May 4, 1970, in No. 1345 Misc., October Term 1969, *Jefferson, et al. v. Hackney, et al.,* vacated the judgment of the court below and remanded the case to the court below for further consideration in light of *Rosado v. Wyman, supra.*

Pursuant to the instructions of this Court, the court below on August 4, 1970, entered its judgment which is identical to its prior judgment in all respects other than that the court found that: (1) the Appellees had adjusted the recognized needs of AFDC recipients to reflect changes in the living costs and that such action was in compliance with Section 402(a)(23) of the Social Security Act; (2) that the Texas regulation or statewide plan (E-434), which allowed the Appellees to pay a percentage of the recognized needs of AFDC recipients, was not in conflict with the requirements established by Congressional Amendment 42 U.S.C. §602(a)(23) and was in conformity with the decision of this Court in *Rosado v. Wyman, supra;* and (3) the injunctive relief sought was denied.

At this point in the proceedings the Appellants for the first time raised objections to the manner in which the Appellees were applying the percentage control factor or percentage reduction system. This was done by the Appellants in a Motion to Amend the Judgment entered by the court below on August 4, 1970.

The Appellees submit that the Appellants should not be allowed at this stage of this long and involved proceeding to raise an issue not heretofore before the court and certaintly not contained in any of the pleadings or relief sought by the Appellants. The Appellants contentions are nothing more than another attempt to salvage a lost cause by changing horses in midstream and making one last try.

In addition, the Appellees submit that the Appellants by these different contentions are merely attempting to reopen for further argument the decision already rendered by this Court in *Rosado v. Wyman, supra,* and if the contentions of the Appellants are to be sustained it would require this Court to reverse its opinion and holding in *Rosado v. Wyman, supra,* or would at best render such decision a nullity.

While this Court dealt with a large number of questions in *Rosado v. Wyman, supra,* the Appellees submit that the Court clearly answered the question of whether a state could pay less than the full recognized need of an AFDC recipient. This Court in *Rosado v. Wyman, supra,* stated that:

> "There are two basic factors that enter into the determination of what AFDC benefits will be paid. *First, it is necessary to establish a 'standard of need,' a yardstick for measuring who is eligible for public assistance. Second, it must be decided how much assistance will be given, that is what 'level of benefits' will be paid.* On both scores

Congress has always left to the States a great deal of discretion. King v. Smith, 392 U.S., at 318. Thus, some States include in their 'standard of need' items which others do not take into account. *Diversity also exists with respect to the level of benefits in fact paid.* Some States impose so-called dollar maximums on the amount of public assistance payable to any one individual or family. Such maximums establish the upper limit irrespective of how far short the limitation may fall of the theoretical standard of need. *Other States curtail the payments of benefits by a system of 'ratable reductions' whereby all recipients will receive a fixed percentage of the standard of need.* It is, of course, possible to pay 100% of need as defined. New York, in fact, purports to do so." (Emphasis added.)

This Court further stated in its opinion that:

"Reverting to the language of §402 we find two separate mandates: first, the States must re-evaluate the component factors that comprise their need equation; and, second, any 'maximums' must be adjusted.

"We think two broad purposes may be ascribed to §402: First to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis. *Consistent with this interpretation of §402, a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need.*

"The Congressional purpose we discern does not render §402 a meaningless exercise in 'bookkeeping.' Congress, sometimes, legislates by innuendo,

making declarations of policy and indicating a preference while requiring measures which, though falling short of legislating its goals, serve as a nudge in the preferred directions. In §402 Congress has spoken in favor of increases in AFDC payments. While Congress rejected the mandatory adjustment provision in the administration bill, it embodied in legislation the cost-of-living exercise which has both practical and political consequences.

"It has the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and placing them among those eligible for the care and training provisions. Secondly, *while it leaves the States free to effect downward adjustments in the level of benefits paid, it accomplishes within the framework the goal, however modest, of forcing a State to accept the political consequence of such a cutback and bringing to light the true extent to which actual assistance falls short of the minimum acceptable.* Lastly, by imposing on those States that desire to maintain 'maximums' the requirement of an appropriate adjustment, Congress has introduced an incentive to abandon a flat 'maximum' system, thereby encouraging those States desirous of containing their welfare budget to shift to a percentage system which will more equitably apportion those funds in fact allocated for welfare and also more accurately reflect the real measure of public assistance being given." (Emphasis added.)

The foregoing statements by this Court clearly indicate that while the states must adjust their recognized need in connection with AFDC payments to reflect cost-of-living increases, that the state is free to decide what percentage of this adjusted recognized need it will pay the recipient.

There is no dispute in this case or in the record before this Court that Texas has adjusted the recognized need in connection with AFDC payments to reflect cost-of-living increases, and that the regulations under attack by the Appellants (E-434) were nothing more than the State of Texas saying that it would pay a certain percentage of such adjusted recognized need, consistent with available funds.

At no place in the decision by this Court in *Rosado v. Wyman, supra,* did the Court require that the percentage control factor or percentage reduction factor be applied to the unmet needs of the recipients rather than the recognized needs of the recipients. Yet the Appellants are trying by this new approach to completely nullify the decision in *Rosado v. Wyman* by a scheme which would make the principles set forth by the Court apply in a manner which would make them meaningless. This Court in *Rosado v. Wyman,* as well as *King v. Smith,* 392 U.S. 309, 318 (1968), recognized that:

> "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds its devotes to the program." (*King v. Smith, supra*)

However, the theory that Appellants are now raising for the first time deals with determining eligibility for AFDC benefits and would deny to the states the right to determine the level of benefits it would allocate to AFDC recipients because it would in actuality and practice prohibit the result to be obtained by use of the percentage control or reduction factor which this Court has heretofore held to be permissible.

Appellees submit that the Appellants' new theory is completely lacking in merit and would be in direct conflict with the previous interpretation of 42 U.S.C. §603(a)(23) by this Court in *Rosado v. Wyman.*

The Appellants' second question raised for this Court's consideration is one which was adversely decided by the court below in both its initial judgment and the one now before this Court. Basically the Appellants are making the contention that there has been a violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States because the Legislature of the State of Texas has not allocated the funds made available to pay welfare benefits in Texas on an equal basis between the various categories of welfare recipients.

The Constitution of the State of Texas in Section 51-a of Article III allows the Legislature to appropriate funds for the State to participate in the OAA, AB, APTD and AFDC Programs, but the extent of such participation is presently limited to $80,000,000.00 and was limited to $60,000,000.00 at the time of the trial of this case. The Legislature of the State allocates, in its appropriations bill, specific sums which are authorized to be expended in grants to recipients in each of the various categories of welfare assistance. At the time of this suit such appropriations allowed payments in the OAA Program of approximately 100% of recognized need; 95% of recognized need in the AB and APTD Programs; and 50% in the AFDC Program. Subsequent appropriations have increased the percentage of recognized need which may be met in the AFDC Program.

The Appellants are contending that such allocations of moneys by the Legislature of the State of Texas

must be made in such amounts that the percentage of the recognized need which is paid to the recipient is the same in all programs or categories of welfare assistance. Appellants would have this Court hold that the Legislature of the State of Texas must cut the allocations of funds to the OAA, AB and APTD Programs and divert it to the AFDC Program, and thereby balance the percentage of recognized need which can be met as to all categories.

The Appellants contend that the equal protection clause of the Fourteenth Amendment to the Constitution of the United States requires this result, and attempt to fortify this position by the allegation that the lesser allocation of funds per capita to the AFDC Program was racially motivated. However, this position is completely lacking in merit, was refuted by the court below, and finds no support in the record before this Court.

The court below based its decision that the allocation of funds by the Legislature of the State of Texas between the various categories of welfare assistance was not racially motivated upon numerous stipulations of fact agreed upon by the Appellants and Appellees. The Appellees in rebuttal of Appellants' racial allegation, would merely refer this Court to the opinion of the court below and the stipulations referred to therein which show the complete lack of merit in Appellants' position.

As to the Appellant's argument that the State of Texas must treat all of the welfare categories, OAA, AB, APTD and AFDC, the same in the allocation of funds, this issue has been laid to rest adversely to Appellants' theory by such decisions as *Morey v. Doud*, 354 U.S. 457 (1957); *King v. Smith*, 392 U.S. 309

(1968); *McDonald v. Board of Election Commissioners of Chicago,* 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969); and *Rosado v. Wyman,* 397 U.S. 397 (1970). The Appellants' Fourteenth Amendment argument represents nothing more than a feeble effort to raise some form of constitutional issue before this Court and upon issues previously decided contrary to Appellants' time worn theory. Issues as to the proper allocation of state funds is a political question and not a judicial question because there are no judicially manageable standards to determine what form of welfare financing by the State would be most equitable. *Baker v. Carr,* 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962); *Powell v. McCormack,* 395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969); *McInnis v. Shapiro,* 293 F.Supp. 327 (1969), aff'd Sub Nom *McInnis v. Ogilvie,* 394 U.S. 322, 89 S.Ct. 1197, 22 L.Ed.2d 308 (1969); *LeBeauf v. State Board of Education,* 244 F.Supp. 256 (1965).

In view of the foregoing authorities, the Fourteenth Amendment argument of Appellants is unsupported by the law or the facts and is lacking in merit.

CONCLUSION

The Appellees respectfully submit that the Appellants have failed to raise any substantial federal question which has not already been decided adversely to Appellants' position, and this appeal represents merely an effort to once again argue issues already settled. Consequently, the Appellees submit that the judgment of the United States District Court for the Northern District of Texas, Dallas Division, entered on August 4, 1970, should be affirmed.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

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J. C. DAVIS
Assistant Attorney General

Pat Bailey

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Attorneys for Appellees

SERVICE

I, Pat Bailey, one of the attorneys for the Appellees and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 3rd day of March, 1971, I served a copy of the foregoing Motion to Affirm on the Appellants by depositing a copy in the United States Mail, postage prepaid, and addressed to the attorneys of record for Appellants as follows: Steven J. Cole and Nancy Duff Levy, Center on Social Welfare Policy and Law, 401 West 117th Street, New York, New York 10027; Carl Rachlin, Hunter College, New York, New York 10021; Edward V. Sparer, University of Pennsylvania School of Law, 3400 Chestnut Street, Philadelphia, Pennsylvania 19104; and Ed J. Polk, Dallas Legal Service Project, 301 N. Market Street, Dallas, Texas 75202.

Pat Bailey

PAT BAILEY

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. 3-3012-B

RUTH J. JEFFERSON, ET AL.

v.

BURTON G. HACKNEY, ET AL.

CIVIL ACTION NO. 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

JUDGMENT

This action came on for hearing on Defendants' motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed of Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges. That on the 1st day of July, 1969, the Court entered a judgment in the above styled and numbered cause, and thereafter on the 7th day of August, 1969, amended Paragraph V of such judgment. That thereafter, on the 4th day of May, 1970, pursuant to an appeal of the foregoing judgment to the United States Supreme Court, the United States Supreme Court vacated and remanded the judgment in this case so that it could be conformed to the United States Supreme Court's decision in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970, in Cause No. 540, October Term, 1969.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed therein, the argument of counsel and the decision by the

United States Supreme Court in the instant proceeding, as well as Rosado, et al. v. Wyman, et al., decided April 6, 1970, it is ORDERED, ADJUDGED and DECREED:

1. That the judgment heretofore entered by this Court on the 1st day of July, 1969, and amended thereafter on the 7th day of August, 1969, is hereby vacated and set aside, and that this judgment be entered in lieu thereof.

2. Defendants' motion to dismiss Ruth Jefferson as a party Plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party Plaintiff.

3. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

4. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

5. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

6. The Defendants herein have adjusted the recog-

nized needs of recipients of the AFDC program administered by the State of Texas to reflect changes in the living costs since such amounts were established. That such action on the part of the Defendants is in compliance with Section 402(a) (23) of the Social Security Act, 42 U.S.C.A. §402(a)(23).

7. The Texas state-wide plan known as E-434, effective May 1, 1969, which allows the Defendants to pay a percentage of the recognized needs of AFDC recipients is not in conflict with the requirements established by the Congressional Amendment 42 U.S.C.A. 402(a)(23) and is in conformity with the decision of the United States Supreme Court in Rosado, et al. v. Wyman, et al., decided on the 6th day of April, 1970.

8. The injunctive relief sought by the Plaintiffs is hereby denied.

Dated this 4th day of August, 1970.

IRVING L. GOLDBERG
Circuit Judge

SARAH T. HUGHES
District Judge

W. M. TAYLOR, JR.
District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

CIVIL ACTION 3-3012-B

RUTH J. JEFFERSON, ET. AL.

v.

BURTON G. HACKNEY, ET AL.

CIVIL ACTION 3-3126-B

MARIA T. DAVILA, ET AL.

v.

BURTON G. HACKNEY, ET AL.

JUDGMENT

This action came on for hearing on Defendant's motion to dismiss Ruth Jefferson and on the merits before a three-judge court composed of Irving L. Goldberg, Circuit Judge, Sarah T. Hughes and W. M. Taylor, Jr., District Judges.

After considering the motion to dismiss Ruth Jefferson the Court finds that at the time this case was filed on February 12, 1969 Ruth Jefferson was a recipient of the AFDC benefits and was at that time a proper party plaintiff and representative of the class of individuals receiving AFDC benefits; the Court further finds that Ruth Jefferson has not been removed from the AFDC rolls and is therefore a proper party plaintiff and is representative of the class of individuals receiving AFDC benefits.

It is therefore ORDERED, ADJUDGED and DECREED that Defendant's motion to dismiss Ruth Jef-

ferson as a party plaintiff be and is hereby overruled and Ruth Jefferson is continued as a party plaintiff.

The case having been heard on the merits and upon consideration of the briefs, the stipulations filed herein and the argument of counsel IT IS ORDERED, ADJUDGED and DECREED:

1. The programs established by the Social Security Act and providing for (a) Old Age Assistance (OAA), (b) Aid to the Blind (AB), (c) Aid to the Permanently and Totally Disabled (APTD), and (d) Aid to Families with Dependent Children (AFDC) each stand alone and are not one program based solely on need. The payment by Texas of a lesser percentage of unmet budgetary needs to recipients of AFDC than to recipients of the other three programs is not violative of the Equal Protection Clause of the 14th Amendment.

2. The payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment.

3. The payment of less than 100% of actual need to recipients of AFDC is not violative of the Equal Protection Clause of the 14th Amendment and is not the result of racial or ethnic discrimination.

4. The Texas state-wide plan known as E-430 and E-434 effective May 1, 1969 violates the requirements established by the Congressional Amendment 42 U.S.C.A. 402 (a) (23) to the AFDC program and is null and void.

5. Defendants are permanently enjoined from en-

forcing the Texas plan E-430 and E-434 providing for payments to recipients of AFDC and from receiving funds from the federal government until such time as a plan is formulated which carries out the provisions of 42 U.S.C.A. 402(a)(23).

It is further ORDERED, ADJUDGED and DECREED that the injunction herein granted is stayed for 60 days from date hereof in order to give the Texas Legislature an opportunity to implement a plan which will conform to the requirements of 42 U.S.C.A. 402(a)(23).

In due time an opinion will be handed down.

Dated this 1st day of July, 1969.

IRVING L. GOLDBERG
Circuit Judge

SARAH T. HUGHES
District Judge

W. M. TAYLOR, JR.
District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION 3-3012-B
RUTH J. JEFFERSON, ET. AL.
v.
BURTON G. HACKNEY, ET AL.

CIVIL ACTION 3-3126-B
MARIA T. DAVILA, ET AL.
v.
BURTON G. HACKNEY, ET AL.

ORDER

On the 7th day of August, 1969, came on for hearing the motion of the Plaintiffs to amend paragraph 5 of the judgment entered in this case on July 1, 1969.

The Plaintiffs and Defendants both appeared by counsel and after consideration of the briefs and argument of counsel it is the opinion of the Court that paragraph 5 should be amended so as to read as follows:

5. Defendants are permanently enjoined from enforcing the Texas Plan E-430 and E-434 providing for payments to recipients of AFDC and are directed, so long as the State has not withdrawn from the program, to formulate and implement a plan which carries out the provisions of 42 U.S.C.A. 402(a)(23).

IT IS SO ORDERED.

IRVING L. GOLDBERG
Circuit Judge

SARAH T. HUGHES
District Judge

W. M. TAYLOR, JR.
District Judge

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No. ~~6553~~ 70-5064

In the Supreme Court of the United States

OCTOBER TERM, 1970

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

ERWIN N. GRISWOLD,
Solicitor General,
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Washington, D.C. 20530

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 6553

RUTH J. JEFFERSON, ET AL., APPELLANTS

v.

BURTON G. HACKNEY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted pursuant to the Court's invitation of March 29, 1971.

The appellants, Texas residents receiving assistance under the federally funded program of Aid to Families with Dependent Children (AFDC), raise two issues in this class action. First, they claim that the manner in which Texas determines the level of benefits it will pay AFDC recipients conflicts with the requirement of Section 402(a)(23) of the Social Security Act, 42 U.S.C. (Supp. V) 602(a)(23) "that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established." No other statutory issue was presented below. Second, they assert that

the challenged Texas practice has a racially discriminatory purpose or effect, and denies them equal protection of the laws.

Because appellants sought injunctive relief against the operation of a regulation of state-wide application on constitutional grounds, a three-judge district court was convened. 28 U.S.C. 2281, 2284. That court initially found for appellants on the statutory ground, *Jefferson* v. *Hackney*, 304 F. Supp. 1332 (N.D. Tex.), and on appeal this Court vacated and remanded for reconsideration, 397 U.S. 821, in light of *Rosado* v. *Wyman*, 397 U.S. 397. On remand, the three-judge court reaffirmed its earlier rejection of appellants' constitutional claims, and held that, given *Rosado*, no conflict between the Texas practice and Section 402 (a)(23) had been shown. Appellants brought a direct appeal to this Court from the order denying the requested injunctive relief. 28 U.S.C. 1253.

1. The Department of Health, Education and Welfare believes that the court below correctly decided the limited statutory question presented, whether the manner in which Texas determines the level of benefits it will pay AFDC recipients conflicts with Section 402(a)(23) of the federal Act, as explained in this Court's *Rosado* opinion.

Prior to the enactment of Section 402(a)(23), Texas limited the amount AFDC recipients could obtain by the imposition of statutory maximums. Under this procedure, a family's need would be calculated in accordance with a statewide standard of need; available income would be deducted from this

sum; and the family would then be paid the remainder or, if it was a lesser amount, the applicable maximum.[1]

When Section 402(a)(23) was enacted, Texas increased the amounts it used "to determine the needs of individuals" by 11 percent, an amount which the Department believes and the appellants appear not to dispute fully reflects the change in living costs which had occurred since the standard had been established. It did not, however, similarly adjust the applicable maximums. Rather, they were eliminated, and the state adopted instead the technique of ratably reducing the standard of need which is the subject of the present dispute. As presently constituted, the state regulations provide for a benefit level at 75 percent of calculated need. Unlike prior practice, however, any outside income is not deducted from the calculated need; instead, the 75 percent level is first computed, and attributable outside income is then subtracted to determine the amount of benefits due.[2] It is this feature of the plan which appellants principally challenge as being inconsistent with Section 402(a)(23).

---

[1] To repeat an example given in the text of the original district court opinion, 304 F. Supp. at 1343, the maximum for a family of five or more was $123 per month. A family of five, on the other hand, might have total recognizable needs of $178 under the statewide standard of need. They would receive $123 per month. If they obtained $60 per month from outside sources, their need would be reduced to $118, and they would receive that sum.

[2] Continuing the example of note 1, Texas would now recognize a family need of approximately $200 for the five member family. If it had no income, it would receive 75 percent of this sum, or $150. If it received unearned income of $60, however, that amount would be subtracted from the benefit, leaving a monthly benefit of $90. (If the income was earned, the cal-

Section 402(a)(23) requires "that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes * * * will have been proportionally adjusted." It makes no reference to the use of ratable reductions and, in particular, it says nothing about the manner in which such reductions are to be calculated relative to offsetting income the family receiving AFDC may obtain. In *Rosado* v. *Wyman, supra,* however, this Court characterized Section 402(a)(23) as having

> the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions. [397 U.S. at 413.]

Persons who receive attributable income of more than 75 percent, but less than 100 percent, of their calculated need under the Texas plan will be ineligible for benefits, although they have a "need" under the state standard; if their income were first subtracted from their need, and 75 percent taken of the remainder, on the other hand, they would be eligible.

---

culation would be somewhat more complicated. See pp. 11–12 *infra*.) Appellants believe this calculation must be made by first subtracting the $60, and then taking 75 percent of the remainder ($140), giving a benefit of $105, and a total monthly income of $165.

If the quoted language is a binding construction of the Act, appellants are thus entitled to prevail. Texas has avoided the stated effect for a limited class of its needy residents.[3] In the Department's view, however, that question was not before this Court in *Rosado,* and the statute in fact imposes no such requirement. It leaves the states free to employ ratable reductions to reduce their welfare expenses, and makes no judgment how those reductions are to be calculated in relation to outside income.

Rosado presented a situation in which the state, New York, paid 100 percent of "need" and the issue was whether the required cost-of-living adjustment had been made. The Court specifically rejected a contention that the statute required an absolute increase in benefit levels, agreeing with the Department's submission that it left states "free to effect downward adjustments in the level of benefits paid" within a framework which would force them "to accept the political consequence of such a cutback and [bring] to light the true extent to which actual assistance falls short of the minimum acceptable." 397 U.S. at 413.

[3] With reduction to 75 percent of need, the effect is avoided only for those needy residents who have *unearned* income in an amount less than need but greater than the ratably reduced standard. That is, under Section 402(a)(8), see n. 6, *infra*, a person earning $228 per month ($200 net after $28 work expenses) would have $30 plus one-third of the remainder ($198) disregarded, and then have his work expenses subtracted. Subtracting $30+$66+$28 from $228 leaves $104 in attributable income, which does not defeat eligibility. Thus, the effect of Section 402(a)(8) is that persons with earned income in a net amount of $200 would not cease to be eligible for benefits until the ratable reduction dropped to 52 percent of need.

In *Rosado,* no such cutback had been made, and so there was no question whether it could be made in a way that denied benefits to individuals who received income in an amount less than the state standard of need, but greater than the amount of assistance which would be paid to an individual who received no income at all.

Indeed, *Rosado* recognized that one purpose of Section 402(a)(23) was "to prod the States to apportion their payments on a more equitable basis." *Ibid.* While that language refers to an incentive in the statute to abandon the use of statutory maximums, as Texas in fact has done, it also describes the method of calculation Texas has adopted. Texas is faced with a total statewide demand for welfare payments which it is unable or chooses not to meet. As a means of adjusting the demand to these budgetary realities, Texas' method has the advantage of allocating a larger proportion to those who need assistance most.

Thus, the Texas plan assures a total income of $150 per month to any family with needs of $200, by providing in the form of welfare assistance the difference between any attributable income the family receives and $150, 75 percent of the calculated need. If the family has $60 attributable income, it gets a benefit of $90; if $175, no benefit; and if it has no attributable income, $150 benefit. If, on the other hand, the state were required to apply its ratable reduction to the deficit between income and need, families with attributable income would be favored by receiving larger benefits: the family with $60 income would

receive a percentage of $140; the family with $175 income, a percentage of $25.

If the state had these obligations, maintaining a 75 percent level of payments would obviously become more expensive; or, in other words, to stay within the same budgetary limitations, the percentage level of payments would have to be reduced. As a result, the family with no income at all might have to make do with 65 percent or 70 percent of its needs, so that the families receiving income could receive amounts which would bring them above that level.[4] It is true that under the Texas plan families with attributable incomes below their needs yet above the Texas percentage reduction are ineligible for the care and training provisions to which the Court refered in *Rosado*.[5] But the Department does not believe that that consequence takes Texas' approach outside the statute, or renders it

[4] If the reduction in this example were 70 percent, a family without income would receive $140; a family with $60 income would receive an additional $98, for a total of $158 (79 percent of need); and a family with $175 income would receive an additional $17.50, for a total of $192.50 (96 percent of need). The total cost to the state for these three families would be $255.50. For the same three families using the Texas method and a 75 percent reduction, the benefits would be $150, $90, and $0, respectively, and the total cost to the state is $240. While it is probably true that there are many more eligible families with little or no income than otherwise eligible families with attributable income in the $150–$200 range, so that the effect on state costs would be less dramatic than in the example, some such effect would be a necessary consequence of adopting the appellants' view.

[5] The Department's statistical service informs us that the value of medical assistance to an average Texas AFDC family is in the range of $50–$60 per month. The value of social services and training is too speculative to be estimated.

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less equitable than other means of apportionment which the state might have adopted.

The Department has approved the Texas method, not only for Texas, but for all other states using it. A total of 26 jurisdictions use a ratable reduction of benefits, either alone or in connection with a maximum; of these, 19, including Texas, apply any attributable income to a ratably reduced standard of need rather than first applying income to need and then applying the ratable reduction to any remainder. See the Appendix *infra*. This diversity of methods existed when the 1967 Social Security Act Amendments, including Section 402(a)(23), were enacted. Congress looked into some of the mechanics of determining the amount of payment at the time, and enacted in Section 402(a)(23) its first reference to the need standard. But nothing of which we are aware in the legislative history shows any purpose to end this diversity of method, which reflects the very broad flexibility states have always had in choosing the methods to be used in determining the amount of assistance payments.

2. The statutory issue raised below was limited to Section 402(a)(23), and to that extent appellants' present reliance on Section 402(a)(10) is undeveloped. The Department believes, however, that, as in the case of the asserted conflict with *Rosado*, appellants' contention is based on *dictum* in an opinion of this Court rather than the statute itself, and that on study of the issue presented Texas' plan would be found to conform.

Section 402(a)(10) provides that AFDC benefits must "be furnished with reasonable promptness to all eligible individuals." Appellants' contention is that, since anyone with less than $200 in available resources is considered "needy" under the Texas standard of need, the denial of benefits under the 75 percent reduction to persons with attributable income of more than $150 but less than $200 constitutes a failure to furnish benefits to "all eligible individuals." In support of this construction, they rely upon this Court's characterization of Section 402(a)(10) in *Dandridge* v. *Williams*, 397 U.S. 471, 481:

> [T]he practical effect of the Maryland regulation is that all children, even in very large families, do receive some aid. We find nothing in 42 U.S.C. 602(a)(10) that requires more than this. So long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated.

If the persons whom Texas treats as needy but not entitled to benefits must be considered "eligible individuals" under the federal Act and if the quoted language is a binding construction of the Act, appellants are entitled to prevail. In the Department's view, however, they are not "eligible individuals" under the federal Act, and the quoted language was unnecessary to the decision in *Dandridge*.

There is considerable support in the legislative history of Section 402(a)(10) for the state's view that the provision was designed only to prevent the use of waiting lists for persons to whom payments of benefits would otherwise be made. See H. Rep. No. 1300, 81st Cong., 1st Sess. 48, 148 (1949); 95

Cong. Rec. 13934 (1949) (remarks of Rep. Forand). Under that view, an "eligible individual" is one who has been found eligible for a payment of benefits, not one who has been found to meet the state's standard of need. The Texas plan does adequately provide for prompt payments to persons found eligible for payments, although not all persons who qualify as needy under the state's standard of need are thus eligible. To read "eligible individual" as referring to the state standard of need is, again, to impose constraints on the manner in which states distribute limited resources. Such an imposition would be unsupported by any legislative history of which we are aware, and contrary to long-established state and administrative practice.

Such a reading of the *Dandridge* language also goes far beyond any matters which can reasonably be thought to have been before the Court or in its contemplation in that case. The question whether a particular method of calculating payments might mean that an otherwise eligible family would receive no payments was simply not before the Court. The family in that case was receiving payments, and hence was "eligible" in whatever sense that word might be used. It was unnecessary to go further and rule on a problem not before the Court, whether and under what circumstances a state could deny benefits entirely to a family which met its standard of need, but whose resources were nonetheless greater than the amount the state would ordinarily give to a family with no resources whatever.

3. The Department does not believe that its views, set forth above, are inconsistent with the views it expressed in its *amicus curiae* memorandum in *Engelman* v. *Amos,* No. 931, this Term. That case involved a claim of inconsistency between New Jersey regulations and Section 402(a)(8) of the Act, which provides for a mandatory disregard of certain earned income in order to encourage assistance recipients to work and eventually remove themselves from the welfare rolls. The New Jersey provisions resulted in a lower cut-off point for welfare eligibility, which the Department believes inconsistent with Section 402(a)(8). While that Section has not been put in issue here, the effect of the Texas method is also to end eligibility for welfare assistance at a lower level than might otherwise be the case;[6] the New Jersey and the Texas provisions both appear to have been animated by the same desire to distribute limited state welfare funds in a manner which assures a greater proportion to those least able to care for themselves.

---

[6] The general operation of Section 402(a)(8) is explained at length in our memorandum in *Engelman* v. *Amos*, *supra*. Under the Texas method, eligibility for payments ceases once attributable income reaches 75 percent of need—$150 in the example used consistently in this brief. Through application of the Section 402(a)(8) disregard, an otherwise eligible person receiving earned income would remain eligible until his income reached $297 per month ($297 less $30 is $267; one-third of $267 is $89, leaving $178; less work expenses of $28 equals $150). Under the method appellants propose as mandatory, however, Texas would be required to continue to pay benefits on a ratably reduced basis until attributable income reached the need level—$200 in the example. If Section 402(a)(8) applied, that point would not be reached until his earnings reached $372 per month ($372 less $30, less one-third of $342, less $28 work expenses, equals $200).

The difference between this case and the New Jersey case is that the outcome here is not the result of a method applied only to persons subject to Section 402(a)(8). The Texas method is applied in all benefit calculations, and for that reason can fairly be described as part of the determination of eligibility. In the course of that determination, Texas properly applies Section 402(a)(8); it invokes no maximum or limitation calculated without reference to this disregard provision. New Jersey, on the other hand, invokes a method which applies only to persons receiving benefits pursuant to Section 402(a)(8), and which New Jersey cannot admit is part of its determination of eligibility. If it is part of that determination, then it falls because of its failure to incorporate the disregard of earned income required by Section 402(a)(8); if it is not a part of that determination, then New Jersey has denied payments to persons it has determined are eligible for payments, in contravention of Section 402(a)(10).

4. Appellants also raise equal protection claims which had been resolved against their contentions at the first hearing, and then preserved on remand. To the extent these are factual in nature, asserting a racially discriminatory purpose or effect, we believe they are best left to the parties for argument. There may also be some suggestion, however, that in reducing AFDC payments to a greater extent than its payments under other federally funded programs, Texas has violated the federal statutes or regulations. The Department believes there has been no such violation. Although all the programs are contained in the Social

Security Act, and there are certain common provisions, the federally funded public assistance programs are nonetheless separate and distinct. A state may adopt one or several, as it chooses. Similarly, so long as it conforms to the federal standards for the particular program, it may administer its programs separately, and adopt differing funding policies. Of course it could not do so to effect racial discrimination. But nothing in the federal provisions requires that it adopt the same fiscal policy toward each of the federal programs in which it chooses to participate.

CONCLUSION

For these reasons, we believe that the district court was correct in its judgment on the issues addressed above. We recognize, however, that there is language in this Court's prior opinions suggesting a contrary result and that, as in *Engelman* v. *Amos, supra,* the matter is of perhaps excessive complexity for summary resolution of the merits. Thus, while we believe the judgment below was correct in these respects, we do not urge summary affirmance.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1971.

APPENDIX

MAY 1971.

SUMMARY OF PAYMENT METHODS

A. 100% of Standard and 100% of Deficit.

1. Connecticut
2. Colorado
3. Hawaii
4. Illinois
5. Massachusetts
6. Michigan
7. Minnesota
8. New Hampshire
9. New Jersey
10. North Dakota
11. South Dakota
12. Pennsylvania
13. Rhode Island
14. Vermont

B. Income subtracted from full standard; deficit ratably reduced.

1. Arizona
2. Florida
3. South Carolina

C. Standard ratably reduced; income subtracted from reduced standard.

1. District of Columbia	(75%)
2. Idaho	(88.6%)
3. Iowa	(81%)
4. Kansas	(94%)
5. Louisiana	(51%)
6. Maryland	(59.5%)
7. Montana	(88%)
8. New York	(90%)
9. North Carolina	(86%)
10. Ohio	(6[illegible]%)
11. Oklahoma	(85%)
12. Oregon	(80%)
13. Texas	(75%)
14. Utah	(70%)
15. West Virginia	(52%)
16. Wisconsin	(85%)

D. Income subtracted from full standard; payment limited by maximum

1. Alaska
2. California
3. Georgia
4. Indiana
5. Maine
6. Missouri
7. Nebraska
8. Tennessee
9. Washington

E. Income subtracted from full standard; deficit rotatably reduced and limited by a maximum

1. Alabama ---------- (35%)
2. Mississippi ---------- (30%)
3. New Mexico ---------- (88%)
4. Wyoming ---------- (90%)

F. Standard ratably reduced; income subtracted from reduced standard and limited by maximum

1. Delaware ---------- (82.6%)
2. Kentucky ---------- (73.1%)
3. Virginia ---------- (90%)

G. Other

1. Arkansas
2. Nevada

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SUPREME COURT, U. S.
DEC 30 1971
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Supreme Court of the United States

No. 70-5064

RUTH J. JEFFERSON, EMMA GIPSON and JOSE APOLINAR VASQUEZ, individually and on behalf of their minor children, and on behalf of all other persons similarly situated,

Appellants,

v.

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare; WILL BOND, Chairman of the State Board of Public Welfare; LOUIS SARAZAN, Secretary of the State Board of Public Welfare; ROSALIND GILES, Director of Field Staff, Dallas Regional Office of the State Department of Public Welfare; individually and in their official capacities,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR APPELLANTS AND APPENDIX

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Supreme Court of the United States

No. 70-5064

RUTH J. JEFFERSON, EMMA GIPSON and JOSE APOLINAR VASQUEZ, individually and on behalf of their minor children, and on behalf of all other persons similarly, situated,

Appellants,

v.

BURTON G. HACKNEY, Commissioner of the State Department of Public Welfare; WILL BOND, Chairman of the State Board of Public Welfare; LOUIS SARAZAN, Secretary of the State Board of Public Welfare; ROSALIND GILES, Director of Field Staff, Dallas Regional Office of the State Department of Public Welfare; individually and in their official capacities,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

BRIEF FOR APPELLANTS

OPINIONS BELOW

The original decision of the three-judge court (Goldberg, C.J., Hughes, Taylor, D.J.J.) is reported at 304 F. Supp. 1332 (N.D. Tex. 1969). Judgment was entered in accordance with that decision on July 1, 1969 and amended on August 7, 1969. This Court vacated the judgment and remanded for further proceedings consistent with *Rosado v. Wyman*, 397 U.S. 397 (1970). *Jefferson v. Hackney*,

397 U.S. 821 (1970). On remand, the district court entered a new judgment on August 4, 1970 (160). The Court did not issue an opinion. On September 23, 1970, again without opinion, the district court overruled appellants' motion to amend the judgment (170).

JURISDICTION

This action was brought pursuant to 42 U.S.C. § 1983 to redress rights under 42 U.S.C. § 301 *et seq.*, 42 U.S.C. § 2000d and under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The instant appeal is being taken directly to this Court pursuant to 28 U.S.C. § 1253 which authorizes such an appeal after a three-judge district court has denied injunctive relief. The Court below consisted of three judges, convened pursuant to 28 U.S.C. §§ 2281, 2284. Probable jurisdiction was noted on October 12, 1971, 40 U.S.L.W. 3161.

CONSTITUTIONAL PROVISIONS, STATUTES REGULATIONS INVOLVED

1. Section one of the Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, as follows:

> ". . . nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws."

2. Section 601 of the Civil Rights Act of 1964, 42 U.S.C. § 2000-d, provides as follows:

> "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

3. Section 402(a)(23) of the Social Security Act, 42 U.S.C. § 602(a)(23) provides as follows:

"A State Plan for aid and services to needy families with children must

* * * * *

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

4. Texas State Department of Public Welfare, Office Memorandum E-430, dated February 28, 1969, provides in pertinent part as follows:

"4. *Percentage of needs payment method*—Generally, this new budgeting concept will involve the following:

A. Determine need using the same allowances for all categories, as explained earlier. (In most cases, needs will be limited to a standard allowance for each adult and each child; allowances for shelter and utilities; and actual cost of prescribed drugs, if any.)

B. Multiply total needs by a predetermined percentage to arrive at the percentage of needs the Department can meet. (The percentage for each category will be determined by State Office on the basis of the number of recipients and the amount of funds available for each category.) The use of a percentage for determining recognizable needs would apply any reduction in grants to all cases in a category rather than lowering only those who are receiving a maximum grant. The percentage can be adjusted up or down to the amount of funds available, although it is anticipated that it will not vary any more than maximum grants have varied in the past.

C. After the percentage is applied to the total needs to arrive at "recognizable needs," the amount of net income (if any) will be deducted to derive the amount of grant."

5. Texas State Department of Public Welfare, Office Memorandum E-434, dated March 13, 1969, provides in pertinent part as follows:

> "As explained in E-430, effective May 1, 1969, a percentage payment method will be used to determine the amount of needs the Department can meet based upon the amount of available assistance funds and the number of recipients in each category.
>
> The percentages of needs the Department can meet as of May 1, 1969, have been officially approved as follows:
>
> OAA 100%
> APTD 95%
> AB 95%
> AFDC ..... 50%"

QUESTIONS PRESENTED

1. Whether Texas may provide needy mothers and children who are primarily Black and Mexican American and who receive public assistance under the federally-aided Aid to Families with Dependent Children program only 50 per cent of the amount which appellees have determined to be minimally necessary for survival in health and decency, while it provides 95-100 percent of the same minimally required amounts under other federally-aided programs to its needy aged, blind and disabled welfare recipients who are predominantly White and Anglo, consistent with the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and with Section 601 of the Civil Rights Act of 1964.

2. Whether Texas may ignore its AFDC standard of need, and instead use a fraction of that standard to determine eligibility for and the amount of AFDC assistance, thereby denying financial aid, employment training and medical assistance to persons who are needy under definitions of need established by appellees, consistent with § 402(a)(23) of the Social Security Act as construed by this Court last term in *Rosado v. Wyman*, 397 U.S. 397 (1970).

STATEMENT OF THE CASE.

Pursuant to the authority given by the Texas Constitution, Art. III, § 51-a, the Texas Legislature has enacted "a program of social security" in order to "provide necessary and prompt assistance to the citizens of [the] State" covered by the legislation (Public Welfare Act of 1941, Art. 695c, § 35. Those citizens are the needy children, aged, blind and disabled who meet the various eligibility requirements. In order to obtain federal reimbursement available for assistance rendered to these individuals, Texas participates in five federally-subsidized assistance programs, Aid to Families with Dependent Children (AFDC), Old Age Assistance (OAA), Aid to the Blind (AB), Aid to the Permanently and Totally Disabled (APTD), and Medical Assistance (Medicaid), and in return for its agreement to abide by Federal requirements receives over $350 million per year from the United States. This case involves both a Constitutional and federal statutory challenge to the administration of these federal-state programs in Texas.

The Constitutional claim (and the claim under the Civil Rights Act of 1964) involves a discrimination of the grossest sort in the determination of the amount of assistance provided to those persons, primarily Black and Mexican-American, who receive AFDC. The discrimination favors the "adult" recipients (mostly White-Anglo) in the other programs. While the Court has considered several Constitutional welfare cases to date, this is the first which presents a discrimination between AFDC and the other programs, rather than a discrimination which cuts across all of the programs, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969), or groups within a particular program, *Dandridge v. Williams*, 397 U.S. 471 (1971). The statutory claim grows out of the same statutes and regulations which gave rise to the Constitutional claim. The statutory question concerns the method of determining financial eligibility for, and the amount of, assistance under the AFDC program. Both claims must be resolved; a decision favorable to appellants on the statutory claim will not end the discrimination among the programs, and thus will

not dispose of the Constitutional and Civil Rights claims. Cf. *Dandridge v. Williams, supra; Wyman v. Rothstein,* 398 U.S. 275 (1970).

In order to qualify for federal matching, appellees have established a standard of need or "standard budgetary allowance" (96).[1] See *Rosado v. Wyman,* 397 U.S. 397 (1970); *Dandridge v. Williams, supra.* The Texas standard consists of a personal needs allowance (food, clothing, incidentals), shelter, allowance, and various special need items (96). Although not required to do so, appellees have made a judgment that the budgetary allowance schedules shall be applicable to all categories, and thus common standards are used to determine the needs of all recipients, regardless of category, except where particular characteristics of the individuals in the different programs justify a different or special allowance. Stipulation No. 63 (81).[2]

[1] Citations to the single appendix will appear as ( ).

[2] Thus the standard allowance for housing is the *same* for adults in all programs (including the mother in AFDC). Children have a smaller personal needs standard allowance on the theory (*not* here in issue) that children in a family unit have somewhat smaller individuals needs. Adults in all programs, however, have identical "personal needs." Certain special allowances are applicable to only one category, e.g. seeing eye dog allowance for the blind, because it is only needed in that category. Other special allowances are made to individuals in all categories who have a special need for them, such as eyeglasses or dentures. Counsel have been advised that the standard budgetary allowance applicable at the time the case was presented to the district court has been modified so as to increase the personal needs standard for adults receiving OAA, AB and APTD, but not for adult caretakers in AFDC. Thus Texas no longer has a completely uniform standard which cuts across all categories. We do not consider for purposes of the discussion of our Constitutional claim any facts not in the record before the district court, however, for the principles involved remain the same. Moreover, it is likely that the new facts relating to unequal OAA, AB and APTD standards would favor appellants, since the payment of 95-100% of the unequal standard has undoubtedly resulted in a sharper discrimination against AFDC, at a time when the state argues it is in a fiscal crisis.

The Texas standard is far from generous. Thus, a family of three children and their mother is determined by appellees to "need" $140, plus actual rent up to a maximum of $42 (if in public housing), each month, or assuming the maximum rent, $2184 per year.[3] By comparison, the federal "poverty level" is $3944 and the Bureau of Labor Statistics Lower Living Budget for a family of four, as of Spring 1970, in Austin Texas was $6197, in Dallas $6683, and Houston $6481.[4] Assuming some rational basis for the administrative determination to set "needs" at a given level, we concede that Texas may set a standard for each program wherever it choses. *Cf. King v. Smith*, 392 U.S. 609 (1968). While not conceding their rationality, appellants do not challenge in this suit the determinations made by appellants in setting those standards. Moreover, nothing in federal law requires Texas to pay 100% of need as it defines need in any of the categories. *Rosado v. Wyman, supra, Dandridge v. Williams, supra.* Texas in fact meets full need only in OAA. This suit does not challenge Texas' right to pay less than full need, nor will a victory for plaintiffs require the appropriation of more funds.

Prior to the commencement of this lawsuit in February 1969, Texas limited its public assistance payments by a schedule of maximum grants. Payments were made according to determined need up to the maximum. When appellees moved to reduce the AFDC grant maximums effective September 1, 1968 by $12 across the board, this suit was

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[3]Plaintiff Emma Gipson, for example, has three minor children. Assuming her rent is the same as it was when the complaint was filed ($25/month), her annual "needs" would be determined to be $1980.

[4]The federal poverty level was first established by Mollie Orshansky, of the Social Security Administration's Division of Research and Statistics (Social Security Bulletin, Jan. 1965). It has been updated since that date by use of the Bureau of Labor Statistics Consumer Price Index. The Bureau of Labor Statistics Lower Living Budgets for 1970 were released by the U.S. Department of Labor in a press release of December 12, 1970 (see Table I).

brought under 42 U.S.C. § 1983 to challenge such action under §402(a)(23) of the Social Security Act, 42 U.S.C. §602(a)(23), a section appellants contended required an increase in AFDC *payments* by July 1, 1969, as well as under the Fourteenth Amendment and Civil Rights Act of 1964. The latter claims were predicated on the fact that the grant reductions allegedly required by a shortage of funds were limited to the AFDC category. Appellants sought injunctive relief against the reductions and a declaratory judgment of their invalidity. During the pendency of the case, and on February 25, 1969, appellees promulgated a statewide regulation known as E-430 (94) which abolished the AFDC maximum grant, provided for an 11% cost of living adjustment to the standard of need in all categories, and established a new method for computing welfare payments. That method requires first, that need be determined "using the same allowances for all categories"; second, that total needs be multiplied by a percentage factor to arrive at an amount designated as "recognizable needs;" third, the amount of net income, if any, is deducted from the "recognizable needs" to derive the amount of the grant. Department Memorandum E-434, dated March 13, 1969 (107), set the percentage factors at the following levels:

OAA	100%
APTD	95%
AB	95%
AFDC	50%[5]

An amended complaint was filed challenging the new method.

The consequences of the new budgetary procedures are significant. While under former methods, which included maximum grant limitations in all categories, full needs for a substantial majority of the "adult" recipients and for some

[5]The AFDC percentage was raised subsequent to the original decision below to 75%. We will use the 50% factor in this brief since that was the original percentage used.

AFDC recipients were met,[6] under the new policy *no AFDC* family can ever end up with more than 50 percent of its needs as determined by the State. Thus appellant Gipson, for example, with personal needs of $65, her children's needs pegged at $75 (at $25 per child), and with shelter needs of $25, would qualify for a monthly grant of $82.50 under the 50% limitation, despite admitted needs of $165 per month. If Mrs. Gipson were to start receiving child support, for example, her grant would be reduced dollar for dollar by the amount of that support. Thus assuming $50 per month support, her grant would be $32.50. Her "unmet needs" would remain the same, however, i.e., 50% of her total needs. In comparison, an aged couple receiving OAA with the same shelter cost as Mrs. Gipson has almost identical "needs" according to appellees, and with equivalent income (for example $50 social security benefits) would receive a grant of $110 per month,[7] or 100% of their needs.

Appellants' constitutional claim is that once "need" is determined by the state for each group of eligible recipients, the state may not discriminate with regard to the percentage of that need it chooses to pay in welfare benefits. The Constitutional and Civil Rights issue in this case does not arise solely from the present differential treatment of welfare recipients in Texas in the percentage of needs met, but rests upon a long history of discrimination against recipients aided in the AFDC program. As is more fully set out in Point I, *infra*, a dual system governs what happens to welfare recipients in Texas. One system governs the treatment of AFDC

---

[6]Stipulations 57 and 58 give the following breakdown: full needs were met in OAA for 91.87% of the recipients, in APTD, 74.4%, AB, 72.4%, and AFDC 43.6% (80).

[7]

Personal needs	$130 ($65 per recipient)
Shelter	$ 25
"needs"	$155
Social Security (less 5.00 credit)	$ .45
Payment	$110

recipients, who are almost 90% Black and Mexican-American mothers and children. Needless to say, as established by the testimony, this group of recipients exerts little political power and is extremely unpopular vis-a-vis the other categories of recipients. Another vastly better system governs the treatment of OAA recipients, two-thirds of whom are White-Anglos with significant political power (72, 73). The facts, which are more fully set out *infra*, make it clear that the grossest sort of discrimination is being perpetrated in the Texas welfare programs.

The consequences of the new budgetary method are significant for the statutory claim as well. Prior to May 1, 1969 all recipients who had some net income, if in an amount less than the standard of need, received a monthly assistance payment from the welfare department. They received such a payment, if otherwise eligible, because they were "needy" under Texas' definition of need. To be sure, the payment may not have met the budgetary deficit of all families in full (standard of need less income) because of the maximum grant limitation. But *all* needy families with children received some aid (and along with financial assistance, medical assistance eligibility).

Thus, plaintiff Davila,[8] who receives approximately $120 per month support for her three children, qualified under the old system for a grant of $54 per month to meet her budget deficit. In addition, she and her children were eligible for Medicaid. Following the adoption of the 50% reduction on May 1, 1969, Mrs. Davila became *ineligible* for assistance despite the fact that her total needs as determined by the standard of need actually *increased* by virtue of the 11% increase in the need standard. The reason for this anamolous result is that although she became "needier,"

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[8]Plaintiff Davila, a member of the class represented on this appeal, was a plaintiff in the suit consolidated for trial with *Jefferson, Davila v. Hackney*, No. 3-3126B, W.D. Tex., and decided together with *Jefferson*.

Mrs. Davila's income is greater than *half* of her adjusted total needs, and since under the new method income is subtracted from the *reduced* standard, she became ineligible for AFDC *and* medical assistance. Under the new procedure, only those needy families with net income less than their "recognizable needs" (i.e. 50% of the standard) qualify for an AFDC payment, and consequent medicaid coverage. Appellants' claim with respect to § 402(a)(23) is simply that the cost-of-living adjusted standard of need must be used to determine financial eligibility for AFDC.

The three-judge court ruled on July 1, 1969 that the Texas welfare regulation did not violate the Fourteenth Amendment or the Civil Rights Act of 1964. The Court held that while the disparate grant amounts do appear to discriminate against AFDC recipients, the size of the grants is not dispositive, and the "structure and purposes" of the Social Security Act must also be considered in judging the constitutional claim. 304 F. Supp. at 1336. The court, in evaluating the grant discrimination in that light, upheld it under the traditional equal protection standard. The court held that while all programs are directed to the relief of financial need, the AFDC program primarily emphasizes the strengthening of family life, while the non-AFDC programs emphasize retention and creation of the "ability for self-care." *Ibid.* Those disparate purposes were held to justify differences in state financial support to the various programs, and the wide differences in percentage of needs met. Finally, the Court found that the evidence of racial discrimination was not sufficient, and thus rejected the special scrutiny test appellants urged was required in evaluating the discrimination. In making its finding, the court relied heavily on the absence of proof of a racially discriminatory *intent* in enacting the the legislation. The district court did hold, however, that the cutbacks violated § 402(a)(23) of the Social Security Act. The court's theory on the latter claim was that § 402 (a)(23) required an increase in *payments*, and that the new

budgetary methods worked a reduction instead. 304 F. Supp. 1332.[9]

Both plaintiffs and defendants appealed. In the interim this Court decided *Rosado v. Wyman, supra,* and construed §402(a)(23) for the first time. In order to give the lower court an opportunity to reevaluate its decision in light of *Rosado,* the Court vacated the original judgment and remanded for reconsideration of its opinion in light of *Rosado.* 397 U.S. 821 (1971). On remand, appellants argued that while *Rosado* does stand for the proposition that AFDC payments may be reduced without violating §402(a)(23), that section does prohibit reductions which negate the important practical consequence of that statute—i.e., to increase AFDC eligibility for those with marginal incomes which for the first time fall below the need standard. The district court entered a new judgment on the federal statutory claim. The court held without opinion that the Texas program satisfies the requirement of §402(a)(23) and is in conformity with the decision of this Court in *Rosado.* In addition, the district court reaffirmed its earlier decision that the substantial difference between treatment of AFDC recipients from those in the "adult" programs did not deprive appellants of equal protection. Plaintiffs appealed to this Court once again, and probable jurisdiction was noted on October 12, 1971.

SUMMARY OF ARGUMENTS

I

Appellants' Constitutional claim rests on the proposition that once Texas officials made a determination that certain groups of dependent individuals should be provided public assistance to help relieve their financial need, and defined the standard which such individuals require to live in "health and decency" (the "standard of need"), they acted irration-

[9]Of course, if *payments* had to be increased under the court's rationale, so did eligibility for those payments.

ally and arbitrarily by determining to sustain some of those individuals (the "adult" recipients, who are two-thirds White-Anglo) at 100% of the standard, and others (children deprived of parental care because of the absence or incapacity of a parent, almost 90% of whom are Black and Mexican-American) at only 50% of the standard. Appellants also contend that this discrimination in the distribution of federal funds which help finance Texas' welfare program violates Title VI of the Civil Rights Act of 1964.

Appellees administer a comprehensive "program of social security" under which assistance is provided to needy dependent children (AFDC) and to the needy aged (OAA), blind (AB) and disabled (APTD). Under both the state and federal statutes all programs share common purposes—the relief of financial need through the provision of cash assistance, and the reduction of dependency through the provision of social services. Policies are set by the same state board, and the programs are administered by a single state agency in accordance with the same procedures.

Despite the basic characteristics common to all four programs, a dual system operates in Texas. Six times the total amount of funds (and ten times the amount of *state* funds) are spent on the "adult" programs than on AFDC, though the recipients of the former programs number less than twice the number of AFDC recipients. Thus although the state has determined needs by standards common to all categories, AFDC recipients receive at the most only 50% of their needs, while the "adult" recipients receive virtually all of their needs (95 to 100%). The discrimination is all the more suspicious in light of the fact that the Legislature has had the power since 1965 to redistribute funds among the programs as long as it stays within a total ceiling. The huge disparity in grants may be explained by the different racial and ethnic characteristics of the recipients in the two systems; the greater relative political power of the OAA recipients; the "preference" for the OAA group among the voters and legislators (conceded by appellees); and the his-

torical social prejudice against the AFDC group, many of whom are unmarried mothers with illegitimate children.

The district court used the wrong equal protection test in measuring the discrimination. The discrimination should have been subjected to a special scrutiny since, while neutral on its face in terms of race, its obvious *effect* was to disproportionately burden Black and Mexican-American welfare recipients. *Dandridge v. Williams*, 397 U.S. 471, 485, n. 17. If this test had been used, the classification would have been invalidated since Texas established no compelling justification for the racially selective device it has chosen to trim its welfare budget. *Shapiro v. Thompson*, 394 U.S. 618 (1969). The lower court, however, found no racial discrimination, relying heavily on the fact that appellees allegedly did not know the racial make-up of the programs when the discriminatory rules were promulgated.

The Legislature's motive is not relevant to the constitutional inquiry, *Palmer v. Thompson*, 403 U.S. 217 (1971), it is the natural result of the legislation which must be measured. Racial discriminations today are perpetrated with much sophistication, and rarely appear on the face of the law. Discriminators no longer openly profess that their decisions are racially based. It was for such reasons that this Court developed the doctrine that a *prima facie* case of racial discrimination can be made objectively, and with statistics.

It was overwhelming proof of this sort, coupled with proof of a tradition of discriminatory welfare policies in Texas, which the lower court rejected in favor of allegations of good faith, and inconclusive evidence which did not rebut or justify the extent of the discrimination. For example, the court's failure to find a racially discriminatory policy was based mainly on several increases in appropriations for the AFDC category since 1943, which finding ignored the fact that those increases failed to keep pace with the growth of the program, while OAA increases far outpaced program growth. Thus *recipients* of AFDC, as opposed to the *state budget* for AFDC, have fared relatively poorly over the years.

The district court should have invalidated the discrimination between AFDC and OAA even under the traditional equal protection test which it used. The state's determination to pay 50% of monthly subsistence needs to one group of needy and dependent welfare recipients, and 95 to 100% to another group of needy and dependent recipients was based solely on the *reason* for their dependency, *not* the extent of their financial need. None of the "justifications" offered by the state for their classification were rationally based; the classification was not shown to have been based on criteria related to any legitimate purpose of the federal or state welfare program.

The state claimed that the AFDC recipients "need" only 50% of what the state had already determined they in fact need, compared to "adult" recipients who it is said "need" 100% of what the state determined they actually need. This frivolous argument is not only self-contradictory, but it is based on unsupportable and unsupported assumptions and a misconception of the nature of public assistance budgeting. Thus the state relies on the assumption that AFDC children can obtain employment, or will likely receive financial support from a relative (e.g. the absent father), whereas the aged recipients allegedly do not have such a potential. This ignores the fact that any income which is in fact available is subtracted first and so has already been counted in the grant computation process; indeed, since the state divides the AFDC standard of need in half *before* subtracting income, any such income is subtracted from the grant dollar for dollar, thus negating the possibility that the reduction might operate as a work or support incentive. *Cf. Dandridge v. Williams, supra.* Moreover, the record showed that most AFDC mothers are so uneducated or incapacitated that they cannot qualify for even the lowest paying jobs. The state has impermissibly based a grant reduction on the *assumption* of income not actually or likely to become available, which it cannot do under the Social Security Act, *e.g., Lewis v. Martin,* 397 U.S. 552 (1970); *King v. Smith,*

392 U.S. 309 (1968). Moreover, assuming the relevance of a mere potential for financial support to a percentage reduction device, the state has deliberately chosen to ignore the fact that most OAA, AB and APTD recipients have a source of income and thus potential for support not available for AFDC mothers, namely social security benefits.

Finally, the district court justified the 50% disparity in percentage of needs met on the basis that each program has a second purpose in addition to providing financial aid, and this purpose differs in each program. Thus, in AFDC the purpose was said to be to strengthen family life, whereas self-care was seen as the purpose of the "adult" programs. Even assuming the court correctly discerned a variance in program purpose, that would not by itself justify any and all discriminations, but only those related to that particular purpose. The purposes on which the lower court relied are non-financial in scope—they are accomplished by the rendering of social services. Grant differentials cannot be justified by an alleged difference in need for social services, particularly where financial aid is the *primary* purpose of all the programs. Moreover, the additional purposes are in fact identical, all designed to reduce dependency (from whatever cause) through a variety of rehabilitative services—this the legislative history making clear.

The discrimination in payments also violates Title VI of the Civil Rights Act. Through Title VI Congress has expressed special concern for policing discriminatory state action which is Federally supported. HEW regulations enforcing Title VI make clear that the statute applies even where the state action is racially neutral on its face. Recipients of federal funds "may not take action that is calculated to bring about indirectly what (Title VI) forbids to accomplish directly." 45 C.F.R. §80.65(h). This Court's decision in *Griggs v. Duke Power Co.*, 400 U.S. 813 (1971), in which a neutral promotion test was invalidated under Title VII since proportionately fewer Blacks succeeded in obtaining promotion under the test than Whites, and since no compelling business necessity for the test was established, is a helpful analogy and should be applied to Title VI as well.

II

Texas' method for determining AFDC eligibility runs counter to the requirement of § 402(a)(23) which mandated Texas to have adjusted, by July 1, 1969, the "amounts used to determine the needs of individuals" to reflect increases in living costs. After Texas made the required adjustment to its standard, it began using only 50% of those amounts as the standard for determining eligibility for assistance, despite this Court's clear ruling in *Rosado* that the standard of need is the "yardstick" for determining eligibility and that it may not be reduced below the level of January 2, 1968, the enactment date of § 402(a)(23).

The statutory issue in this case has actually been decided by the Court in *Rosado v. Wyman*, 397 U.S. 397 (1970), favorably to appellants' claim. New York was found in *Rosado* to have violated § 402(a)(23) when it reduced its standard of need by eliminating items therefrom, because in the process it had "circumnavigated" the intended practical consequence of the statute, namely

> "of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them amongst those eligible for the care and training provisions." 397 U.S. at 413.

Texas' use of an amount which is 50% of the standard of need to determine eligibility negated its 11% cost-of-living increase to the standard of need since it prevented those "marginal income" families who are now "needy" under Texas' revised standard from receiving aid. (Indeed, almost 2500 families who were theretofore receiving aid were eliminated from the rolls).

The Government's contention that the question of whether a percentage reduction could be applied to deny benefits to some needy individuals was not before the court in *Rosado* is belied by the Court's explicit reliance on the increased eligibility function of § 402(a)(23) in order to find some

practical meaning to that statute. Once it rejected petitioners' claim that *payment* adjustments were mandated, the Court found meaning for the section *by accepting the one urged by HEW*, namely that compliance with the adjustment requirement to the needs standard (even without an increase in payments) would at least make more persons eligible for supplementary assistance, medical care, and employment training. In so doing, the Court set out how a ratable reduction works:

> "A 'ratable reduction' represents a fixed percentage of the standard of need that will be paid to all recipients. In the event that there is some income *which is first deducted*, the ratable reduction is applied to the amount by which the individual or family income falls short of need." 397 U.S. at 409 n. 13 (emphasis added).

Only if a ratable is used in such a way will the eligibility consequences of the statute materialize. Texas has avoided this result by applying the reduction to the standard of need *before* income is subtracted. As a consequence, many needy families under Texas' standard lose all AFDC payments, as well as medicaid eligibility.

The Court's interpretation of the effect of § 402(a)(23) in *Rosado* is consistent with the legislative history of the section, and with the historical function of the standard of need as the eligibility determinant in the federal public assistance programs since their inception. The testimony and documentation provided Congress in 1967 in support of HEW's proposal to require payment of 100% of need showed generally low assistance standards in the various states, and identified such standards as the ones which were being used as eligibility standards for AFDC. HEW also showed Congress that payments were reduced below these standards in many states by either maximums or percentage reductions to the budgetary deficit, not by reductions to the standard of need itself. Thus the adjustment Congress necessarily required by § 402(a)(23) was to these low *eligibility standards*, and thus it is this standard which must be maintained after the adjustment.

Moreover, in all publications, regulations and policy issuances by the federal agency prior to January 1970 the standard of need is described as the "yardstick" for determining eligibility. Indeed, HEW regulations specifically require that each state establish "a statewide standard . . . to be used in determining . . . need . . . and . . . the amount of the assistance payment." 45 C.F.R. § 233.20(a)(2). Moreover, federal rules require that "in establishing financial eligibility . . . income . . . will be considered in relation to the State's standard of assistance." 45 C.F.R. § 233.20(a)(3)(ii).

The only exception to these consistent HEW definitions of the standard of need as the eligibility level came three months before the *Rosado* decision in a State Letter (No. 1074) which set forth the agency's view that the standard of need did not thereafter have to be used to determine eligibility, and that a new "payment standard" could be established for the purpose. The obvious inconsistency of State Letter 1074 with § 402(a)(23) and other agency regulations and policies which were established without regard to § 402(a)(23) and the fiscal and political consequences of increased eligibility, clearly demonstrates HEW's reluctance to impose any burdens whatsoever on state welfare departments as a result of § 402(a)(23). Moreover, HEW's approval of the Texas method is in conflict with the agency's position in its *amicus* brief in *Engelman v. Amos*, 40 U.S.L.W. 3216 (Nov. 9, 1971), where it contended that payment reductions could not be accomplished by a method which was not related to, but rather separate from, the determination of need. Texas' reduction method results in payments which are not related to the amount of assistance determined to be needed under the state's standard of need, contrary to the *Amos* decision and HEW regulations, *e.g.*, 45 C.F.R. § 233.20(a)(3)(viii).

Finally, HEW's interpretation of § 402(a)(23) places that section in conflict with other provisions of the Social Security Act. In keying eligibility for medical assistance, work incentives, employment training and social services to the

receipt of cash assistance, Congress has consistently assumed that all who were needy under state standards, and otherwise eligible, were receiving *some* aid. Moreover, that was the interpretation placed on the Act, in particular § 402(a)(10), by this Court in *Dandridge v. Williams, supra,* in which the Court held that "so long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated." 397 U.S. at 481. Texas denies aid completely to many children who are dependent and needy under the state's standards. See *King v. Smith, supra.* Such a result would not obtain if Texas used its revised standard to measure AFDC eligibility.

ARGUMENT

POINT I

THE PAYMENT BY TEXAS OF A SUBSTANTIALLY LOWER PERCENTAGE OF STATE DETERMINED "NEEDS" TO RECIPIENTS OF AFDC THAN IS PROVIDED TO RECIPIENTS WITH THE SAME "NEEDS" IN THE "ADULT" PROGRAMS, OAA, AB AND APTD, DEPRIVES APPELLANTS OF THE EQUAL PROTECTION OF THE LAWS TO WHICH THEY ARE ENTITLED, AND OF THEIR RIGHT UNDER THE CIVIL RIGHTS ACT OF 1964 TO BE FREE FROM RACIAL DISCRIMINATION IN A FEDERALLY FUNDED PROGRAM.

Appellants' basic position is that once the appropriate Texas officials fixed upon a standard of need for each of the categories of public assistance, thus explicitly acknowledging the minimum amounts they deem necessary for applicants and recipients in the respective categories to achieve "economic security," Texas may not arbitrarily provide assistance payments at a lower percentage of determined need in AFDC than it does for the other categories. If it must reduce payments below the need standard, Texas must do so uniformly in all programs.

Appellants are aware of the difficult burden they face in overturning a state's decision as to the proper allocation of its welfare funds. Nonetheless, as we shall demonstrate

below, appellees have not established a "solid foundation" for the discrimination in payment levels to AFDC families, such as this Court found for the family maximum in *Dandridge*, 397 U.S. at 486. Indeed, their proferred justifications border on the frivolous. Moreover, we urge the Court to apply a more rigorous standard of review in this case than was found to be applicable in *Dandridge*. First, the discrimination here is leveled against an historically unpopular and disenfranchised group, AFDC mothers and their children, many of whom are illegitimate. In *Dandridge* there was no traditional prejudice against large families *per se*. Second, and most important, in this case the record establishes that the discrimination against AFDC has an overwhelming racial impact, disproportionately subjecting Blacks and Mexican-Americans to the vicissitudes of public opinion and fiscal limitations. See *Dandridge v. Williams*, 397 U.S. at 485 n. 17.

A. Texas' Dual System of Welfare

1. *The Unified Aspects of the Welfare Structure*

Texas' welfare programs are authorized by the State Constitution, which provides, in a single section, that the Legislature

> "shall have the power to provide for assistance grants to and/or medical care for, and for rehabilitation and any other services included in . . . federal laws . . . on behalf of:
>
> (1) needy aged persons . . .
>
> (2) needy individuals who are totally and permanently disabled . . .
>
> (3) needy blind persons . . . [and]
>
> (4) needy dependent children and the caretakers of such children."
>
> Constitution of Texas, Art. III, § 51-a.

Section 51-a places a $60,000,000 ceiling on total annual expenditures for such public assistance payments (excluding

medicaid).[10] Until 1945, this constitutional authority for the provision of public assistance had been divided into separate sections, each including a different category of needy citizens and each providing for a separate appropriations ceiling, but all were consolidated into a *single provision* (§51-a) that year.[11]

Pursuant to this general constitutional authority, the Texas Legislature has enacted a comprehensive "program of social security," Public Welfare Act of 1941, Art. 695c, §35.[12] A single state agency, the State Department of Public Welfare, whose Commissioner is appointed by a Board of Public Welfare, is charged with administering *all* such programs. The state agency is authorized in a *single* provision to provide in *all* programs "the entire range of public welfare assistance and/or services designed to help families and individuals attain or retain capability for independence or self-care and for such rehabilitation and other services prescribed or authorized under Federal laws . . ." *Id.* at §4 (12). Since the issue in this case relates to relative financial assistance levels it is critical to note that appellees testified below that the provision of financial assistance was the fundamental purpose of all four welfare programs, and the common "philosophy" of each. Sarazan Dep. p. 51, see

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[10]The ceiling was $60,000,000 at the time of the district court's decision, but was raised subsequently to $80,000.000.

[11]In 1935, the general prohibition on public grants, Art. III, §51, was bypassed by the addition of a §51-b, authorizing grants for needy aged citizens. In 1937, §51-c was added to permit aid to the blind, and to dependent children. In 1945, as noted in text, an amendment "combined these three programs." Texas State Library, Legislative Reference Division, Comment, V.A. Const. Tex.; following Art. III, §51-a. In 1956, §51-b-1 was added to authorize aid to the disabled, which was combined with the other categories in 1963. In 1965, authority for medical assistance was added, and the maximums for appropriations for each program were abolished with the overall ceiling retained.

[12]See V.A.T.S., Art. 695c, §§12 *et seq.* (AB); 16-A *et seq.* (APTD); 17 *et seq.* (AFDC); 20 *et seq.* (OAA).

Stipulation No. 85 (85). Thus, in accord with this common purpose to provide for the basic survival needs of the state's dependent citizens, appellees, as noted above, have determined those minimal needs by using common financial standards.

Thus, the four welfare programs share several fundamental characteristics. Their beneficiaries are all "needy," as defined by the state and their beneficiaries are all "dependent," *i.e.*, unable to support themselves without public aid. While the *source* of their dependency may differ (old age, physical incapacity, childhood and lack of parental care, blindness), all beneficiaries are by definition equally reliant upon the state for their survival. The programs share common purposes, are administered by the same state board, and in accordance with the same state statutory provisions governing applications, investigations and appeals.

The essential similarity between the various Texas programs is not surprising in light of the basic structure of the federal Social Security Act, 42 U.S.C. §301 *et seq.*, which the Texas legislation mirrors. The Act currently provides grants-in-aid to the states for four programs, OAA (Title I), AFDC (Title IV), APTD (Title XIV) and AB (Title X). In enacting the original measure in 1935, Congress refused to give federal financial support for *all* needy people. It selected the primary groups of needy dependent people who lacked a "breadwinner" owing them a legal duty of support. These two groups were the old people and the dependent children whose father was dead, disabled or had deserted. See Report of the Committee on Economic Security to President Roosevelt, Hearings Before the Committee on Senate Finance, on S. 1130, pp. 1313-1315, 1339 (1935). Unemployment insurance, work programs, etc., were to be provided for those needy people who could work. *Ibid.* See, *e.g.*, *King v. Smith, supra.*[13] That all beneficiaries of fed-

[13]The distinction is emphasized again and again in the original document leading to the Act. Thus, in the Staff Report of the Committee on Economic Security, it was emphasized that old age assistance is designed "to give immediate aid to aged individuals . . . who are not

erally-aided assistance were deemed to be *similarly situated with respect to their financial need and ability to provide for themselves* was specifically noted by the Committee on Ways and Means in reporting out the original legislation:

> "The bill is designed to aid the States in taking care of the *dependent members* of their population, and to make a beginning in the development of measures which will reduce dependency in the future. It deals with four major subjects: Old-Age Security, Unemployment Compensation, security for children, and public health. *These subjects are closely related, all being concerned with major causes of dependency. Together they constitute an important step in a well-rounded, unified long-range program for social security.*" H.R. Rep. No. 615, 74th Cong., 1st Sess. (1935), p. 3 (emphasis added).

In sum the beneficiaries of the federal programs, as paralleled by Texas' program, share the basic characteristics of *need* and *dependence.*

Each of the Federal titles reflects the common antecedents for the federal programs, namely the desperate financial need of a class of citizens, and the dependence of those citizens on their government. Thus the "purposes" of AFDC, OAA, and AB in the *original* Act were identically stated to be "to furnish financial assistance" to the dependent individuals covered in the particular title. Pub. L. No. 241, 74th Cong., 1st Sess. (1935), §§ 1, 401, 1001. To be sure, the single purpose of the federal public assistance effort was thereafter expanded to reach beyond the furnishing of cash

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employable on work projects;" aid to children was enacted because "Attempts to provide social security for the unemployed . . . will not benefit families whose breadwinners are absent. For these groups of families, special provision must be made." Social Security in America: The Factual Background of the Social Security Act as Summarized by Staff Reports to the Committee on Economic Security at pp. 217, 230 (1937). The blind were also included in the original recommendations and act. Later on, aid to the permanently and totally disabled was added to the Social Security Act.

public assistance. However, the major redefinition of legislative "purpose" in all the categorical programs, which occurred in 1956, once again emphasized the identity of legislative purpose among the programs.

Thus, §§ 1, 401, 1001, and 1401 were all amended in 1956 to add the additional goal of the federal legislation, namely the provision of social and rehabilitative services, intended, according to the general statement of purpose applicable to *all* the 1956 amendments, to help "to strengthen family life and [to help] needy families and individuals attain the maximum economic and personal independence of which they are capable." Pub. L. 84-880, § 300, 84th Cong., 2d Sess. (1956), U.S. Code Cong. and Admin. News 990 (1956).[14] Congress apparently believed in 1956 that relieving financial need would not suffice, and so it included as an objective in each of its four programs the elimination of dependency (as distinct from need) through the availability of social services.

Despite the basic characteristics common to all four programs noted above, a dual system governs what happens to the recipients. Below we describe the following characteristics of the dual system of welfare, concentrating on the

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[14] Thus § 1(OAA) was amended to add the purpose "of encouraging each State . . . to help such individuals attain self-care." Pub. L. 84-880, § 311. Section 1001 (AB) was amended to add the purpose "of encouraging each State . . . to help such individuals attain self-support or self-care." Pub. L. 84-880, § 313. Section 1401 (APTD) was similarly amended. Section 401 (AFDC) was likewise amended to reflect the same general rehabilitative purpose, but was structured to take into account the particular cause of AFDC dependency, such as broken homes. Thus the new AFDC purpose was "to help maintain and strengthen family life and to help such parents or relatives to attain the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection." Pub. L. 84-880, § 312. The new statutory purpose was implemented by adding to *each program* the same plan requirement which required each state to provide a description of those services it would provide to accomplish the desired objective. 42 U.S.C. §§ 302(a)(11); 602(a)(14); 1202(a)(12); 1352(a)(11).

two large programs, AFDC and OAA, but noting pertinent facts with regard to APTD and AB as well: (1) the gross differences in the total monies expended on the recipients in the two systems; (2) the gross differences in the state funds requested by appellees and appropriated by the legislature for the recipients of the two systems; (3) the different racial and ethnic characteristics of the recipients in the two systems; (4) the greater political power of the OAA recipients; (5) the different social attitudes toward the recipients in the two systems, including the special exclusionary policies applied to applicants for AFDC, until ruled illegal by the federal welfare agency and the Supreme Court. Finally, and most importantly, we review the effect of these differences on grant levels.

2. *The Gross Difference in State Appropriations and Total Monies Expended on AFDC Recipients and "Adult" Program Recipients*

One basic difference between the treatment afforded recipients under Texas' dual system of welfare is seen by examining the amount of money (federal, state and total) expended upon the recipients of AFDC as distinguished from the recipients of the "adult" programs, especially OAA. These are set out immediately below.

NET FUND EXPENDITURES FOR OAA, APTD, AB AND AFDC IN TEXAS BY SOURCE OF FUNDS FOR THE FISCAL YEAR ENDED AUGUST 31, 1968

PROGRAM	TOTAL	SOURCE		% FROM
		Federal	*State*	*State*
OAA	$167,529,066.54	$119,366,167.78	$48,162,898.76	29%
APTD	$ 10,020,681.00	$ 5,773,561.75	$ 4,247,119.25	42%
AB	$ 3,719,944.00	$ 2,319,978.17	$ 1,399,965.83	38%
AFDC	$ 32,425,700.00	$. 26,276,272.27	$ 6,149,427.73	19%

SOURCE: Texas State Dept. of Public Welfare, 1968 Annual Report, Table 2, Stipulation 25 (71).

These expenditures should be considered in relation to the total number of recipients in each program, set out in the table below.

NUMBER OF RECIPIENTS BY PROGRAM
IN AUGUST, 1968

PROGRAM	NUMBER OF RECIPIENTS
OAA	229,654 recipients
APTD	15,962 recipients
AB	4,154 recipients
AFDC	138,942 mother & children recipients

SOURCE: Texas State Dept. of Public Welfare, 1968 Annual Report, p. 3 and Table 6, Stipulation 26 (71).

As can be seen from the above, almost six times the total amount of welfare funds and ten times the amount of state funds alone are spent on the "adult" programs than on AFDC, though the recipients of the former programs number less than twice the number of AFDC recipients. The state contributes a smaller percentage of funds to AFDC than to any other program. Although there are seven times as many AFDC recipients, the state's share of funds is hardly more for AFDC than for the combined amounts for APTD and AB.[15] On a national basis, Texas has the seventh highest per capita contribution to OAA ($4.88) and the third lowest per capita contribution to AFDC (60¢). National average per capita contribution to OAA is $3.10 and to AFDC $5.10. Department of Public Welfare, 1968 Annual Report, Table 4. No argument as to different "need" can count for the striking disparity in appropriations for AFDC as against

[15]The "average" OAA payment per recipient in June 1968 was $60.25; the "average" AB payment was $72.70; the "average" APTD payment was $56.30; the "average" AFDC payment per recipient (mother and children) was approximately $20.70. See Dept. of Public Welfare, 1968 Annual Report, Table 8, and Charts 8, 9 and 11.

the adult programs.[16] The failure to give a larger share to AFDC is especially peculiar in light of the *greater* number of federal dollars each state dollar appropriated for AFDC brings as compared to the other programs. Hackney Dep., p. 81.

[16]In his deposition, appellee Hackney attempted to counter the obvious implications of the above figures by stressing that there were about eight (8) times as many *households* in OAA as in AFDC (where there were 30,454 family units in August, 1968). Hackney Dep., p. 69. His argument was that greater OAA expenditures may be caused by utility and rental costs which allegedly remain more or less constant per household, and that the eight to one ratio of expenditures was merely reflective of the ratio of household units in OAA and AFDC. Mr. Hackney's argument is misleading for several reasons:

(1) In fact, appellees have determined that household needs for rent *do* vary with the size of the household, and they thus budget larger families for a higher shelter maximum than smaller families.

(2) The extra-large percentage of total appropriations for OAA is sufficient to have virtually 100% of OAA recipient needs provided for, while the AFDC recipients receive only enough monies to pay for 50% of their needs (including rent). Thus *extra* needs of elderly people do not account for the large differential in expenditures for OAA as against AFDC.

(3) Though the "family units" (requiring, possibly, separate rent) are at best only two-thirds as many in AFDC as in APTD and AB combined, and the total number of APTD and AB recipients are only one-seventh as many as in AFDC, the state contribution to those two programs is almost the same as to AFDC. The disparity between "unmet need" in AFDC, on the one hand, and APTD and AB on the other, is also sharp.

3. *The Racial and Ethnic Characteristics of AFDC as Distinguished from the "Adult" Programs*

The table below sets forth the racial and ethnic characteristics of each of the programs as of March 1, 1969:

RACIAL AND ETHNIC CHARACTERISTICS OF RECIPIENTS, BY CATEGORY, AS OF MARCH 1, 1969

PROGRAM	WHITE-ANGLO	BLACK AND MEXICAN-AMERICAN	BLACK	MEXICAN-AMERICAN
AFDC	15.4%	84.6%	44.6%	40.0%
OAA	62.5%	37.5%	22.0%	15.5%
APTD	56.6%	43.4%	26.9%	16.5%
AB	44.3%	55.7%	31.1%	19.6%

SOURCE: Defendants' Answers to Plaintiff Davila and Gutierrez's Written Interrogatories Numbers 19 and 20; Stipulation 31 (72).

Figures for the whole of 1967 and 1968 reveal closely corresponding percentages. Stipulation 33 (73).

The "adult" programs, therefore, are a majority White. The AFDC program is overwhelmingly Black and Mexican-American. The program with the greatest majority of White-Anglos gets the largest share of state expenditures for its size; the two adult programs with a lesser number of White-Anglos get the next largest share in relation to size; the program getting the smallest share of state and local expenditures in relation to size is the largely Black and Mexican-American program, AFDC.

4. *AFDC Recipients Are Politically Powerless and the Subjects of Social Prejudice Based on the Circumstances of Both Family Status and Race*

While legislative motive is never determinative in analyzing a classification under the equal protection clause, *cf., Palmer v. Thompson*, 403 U.S. 217 (1971), and section B *infra*, the fantastically wide margin in actual expenditures for the adult welfare programs compared to those in AFDC

are in fact explainable in terms of the historical public "preference" for OAA and hostility to the AFDC category of recipients, an attitude which reflects both the family status of most AFDC families, their racial composition, and lack of raw voting power in comparison to OAA.

First, it is well to remember just who is eligible to receive AFDC in the first place. To qualify, the children must be deprived of parental support due to the death, incapacity or absence of one parent (usually the father). 42 U.S.C. §606. "Absence" would qualify a family where the father deserted, or indeed, where he never maintained a home with the children. Thus, AFDC families and potential eligibles often consist of illegitimate children, and parents who have not conformed to society's mores. See Steiner, *Social Insecurity: The Politics of Welfare* (1966), p. 3.[17] Thus, nationwide, over 75% of all AFDC families have established their eligibility on the basis of an absent parent, and in Texas, almost 80% have done so.[18] The effect of this obvious characteristic of AFDC-type families on the formulation of public policy has been dramatic.

Thus the original federal intervention in the public assistance field in 1935 was dominated by the "special political appeal of the aged." Steiner, p. 21. As noted by Steiner, even the order of the various titles of the Act (OAA is Title I, AFDC is Title IV) was set forth as it was because of the popularity of OAA, an attempt to draw political opposition away from the less popular proposals. Steiner, p. 20.[19] This

[17]Hereafter cited as Steiner.

[18]NCSS Report AFDC-3 (69); Findings of the 1969 AFDC Study: Data by Census Division and Selected States. Table 13. Over 40% of AFDC families both in Texas and nationwide have become eligible on the basis of a deserting father or because the father never lived in the mother's home. *Ibid.*

[19]The comparative political strength of the OAA proposal was evaluated by Edwin Witte, Executive Director of the Technical Board on Economic Security of the President's Committee on Economic Security, as follows:

view has been a factor in obtaining more liberal federal aid for state OAA programs. See Steiner, pp. 23-25, 153-54.

The political preference for OAA on the federal level merely reflects, of course, the political realities "back home." It is here that AFDC has not fared well in relation to OAA in the battle to gain public concern and consequently favorable (or at least fair) state policies.[20] Thus the Assistant Director of Program Administration for the Texas welfare

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"As the situation developed, I doubt whether any part of the social security program other than the old age assistance title would have been enacted into law but for the fact that the President throughout insisted that the entire program must be kept together. Had the measure been presented in separate bills, it is quite possible that the old age assistance title might have become law much earlier. I doubt whether anything else would have gone through at all." Witte, The Development of the Social Security Act (1962), pp. 78-79.

[20] As noted by Steiner, state policies in public assistance generally, have been dependent on the public image of the recipient. Policies are more favorable "when the image is that of a respectable, aged, white literate citizen in his 'golden years,'" and less favorable when "the image of the recipient changes to that of an uneducated, unmarried Negro mother and her offspring." Steiner, p. 3. Appendices A and B illustrate this principle and demonstrate that Texas' policies should not be viewed in isolation from discriminatory practices used nationwide. Appellants have set out in Appendix A and Appendix B to this brief, a comparison of percentages of need paid in AFDC and the "adult" programs. As of October 1970, sixteen states paid a *lower* percentage of need in AFDC than in one or more of their "adult" programs, while no state discriminated in favor of AFDC. Moreover, in seven of the sixteen states the percentage disparity between AFDC and the "adult" percentage was as great or greater than 25% (the current Texas disparity). Only in two states was the disparity greater than the 50% used by Texas in May, 1969. Of the seven states with greater than a 25% disparity, it is perhaps not coincidental that six are in the deep South (Alabama, Florida, Louisiana, Mississippi, South Carolina and Texas) and that five (including Arizona, but not Mississippi or South Carolina) are predominantly non-white in AFDC and White in OAA. Mississippi is predominantly Black in *all* programs, but the largest percentage of White recipients is in OAA, and the smallest in AFDC. South Carolina is overwhelmingly Black in AFDC and evenly divided in OAA.

department testified that "the Old Age Assistance group has had a good deal stronger voice in making its needs and concerns heard than the group of children." Gregg Dep., p. 28. The reason for this more effective voice has *not* been a more persuasive or rationally based presentation to the public or the legislature (in terms of reasons for the discrimination) on behalf of the aged citizens—it has been simply a case of who has got the votes. In Texas, the OAA recipients do.

The vast majority of AFDC recipients are children who cannot vote and are totally lacking in political power. Their mothers, poor, Black or Mexican-Americans, small in number, many of whom may not vote, hardly "count" in the ordinary political sense of things. In fact, children of AFDC represent only 2.3% of the Texas population under 18 years old. In contrast, however, the 230,000 persons on OAA (most of whom are White) constitute more than one-fourth of the population of Texas over the age 65.[21] The OAA recipients obviously do "count" in the political sense of things. When asked for a possible explanation for the nearly eight to one ratio in total state appropriations for OAA and AFDC respectively, appellee Bond, Chairman of the Board of Public Welfare, candidly attributed the comparative legislative strength of the OAA recipients to their voting power:

> "This goes into plain politics, this part does. It goes clear back to the people, not the legislature.
>
> You must remember one thing that the people do: old age assistance touches nearly every home in Texas, whether you have got a mother on it or an aunt or cousin. I have got somebody drawing old age assistance in our county alone.
>
> We have got, I think, 2,500 recipients drawing old age assistance, and they touch not every home but a wide majority of homes in Hillsboro, Dallas homes,

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[21] Texas ranks seventh nationally in this latter statistic and forty-seventh in the former. Dept. of Public Welfare, 1968 Annual Report, charts 6 and 7.

> Forth Worth homes, but we only have 88 children drawing AFDC, which doesn't cover as many homes.
>
> Legislators and politicians when they go for votes they know who has the votes, they know where the widest help is needed; and it's magnified, it's called to their attention: AFDC just doesn't touch as many people or as many places.
>
> I'm like Mr. Sarazan, I worried about all of them quite often. None of them get what they should. . . ."[22] Bond Dep., p. 18-19.

Finally, with respect to the favoritism towards the OAA program, such preference is not only a function of raw political power. The public in Texas, according to appellee Hackney, considers OAA a "pension," the *earned* right of recipients, rather what it actually is, a welfare program based on *current financial need* and not direct pecuniary contribution. Hackney Dep. pp. 71-72. OAA is identical to AFDC in this regard.[23] Better financial treatment of OAA recipients is thus in part attributable to a public "myth" of the "worthiness" of OAA recipients to receive their benefits, just as the disfavored treatment of AFDC has primarily been related, as we shall demonstrate *infra*, to a public view of those recipients as being "unworthy."

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[22]The sensitivity of Texas politics to the old age group may be demonstrated in many ways, including the exemption of the old age group from the former poll tax.

[23]Not only is the alleged distinction inaccurate in terms of the differences between needy old people and needy mothers, it is constitutionally impermissible as a basis for discrimination in a welfare program. The argument offered by appellants in *Shapiro v. Thompson, supra,* that long-term residents, having made a larger "contribution" through taxes to the community than new residents, may be the subject of favoritism in welfare benefits, is closely analogous, and was rejected by the Court. "[L]imitation of welfare benefits to those regarded as contributing to the State is [not] a constitutionally permissible state objective." 394 U.S. at 633. The Court specifically distinguished state "insurance programs which may legitimately tie the amount of benefits to the individual's contributions." 394 U.S. at 633, n. 10.

What is shocking about the emotional (but not rational) political preference for OAA vis-a-vis AFDC is not that it exists, or the reasons that it flourishes, but is appellees' unashamed admission that it is determinative of legislative action in the welfare area. Appellees' own attorney astonishingly questioned Mr. Hackney about alleged discrimination against AFDC in these terms:

Q: "Counsel has asked you several questions about prejudice against the AFDC program, discrimination against it possibly. Would you say there exists prejudice? I am talking about on a wide level rather than just isolated cases—whether we are talking about a question of wide prejudices or discrimination against a particular program, *or whether there exists more an atmosphere of preference for other programs?*

Mr. Hackney replied:

A: "I think probably the atmosphere there is the preference. Historically, this has been true. I think probably nationwide that the preference has been old age assistance.

The remarkable colloquy continued:

Q: "So if we take this on out one step further, if the Legislature of this State and the people they represent feel this way, have preference for a particular program over another one, this can even show up in the amount of money that they are going to make available to this program.

A: "Yes. As I have stated before . . . I think legislators are sensitive to the desires of their constituents, and that you will find them voting the desires of their constituents."

And finally, summing up this gross lack of sensitivity to their own participation in an irrational and politically motivated system, the Assistant Attorney General characterized the "problem" as follows:

Q: "In other words though, . . . if there has been, on the part of the legislature, any favored treatment, it's not

> because of prejudice towards one or more of those programs, as much as it is a preference for the other ones?
>
> A: "That's true. . . ." Hackney Dep., pp. 108-109.

"Preference, not prejudice," may service to assuage moral guilt; but it cannot be clearer evidence of an invidious discrimination against AFDC recipients. A state may not, of course, legislate otherwise irrational classifications in order to accommodate community sentiment or a majority of the voters. See *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, 736 (1964); *Cooper v. Aaron*, 358 U.S. 1, 12, 15 (1958). The record in this case, and of the last thirty years of Texas' public assistance experience, moreover, does in fact show clearly delineated prejudice against the AFDC population. This we now demonstrate.

As noted by this Court in *King v. Smith, supra*, a significant characteristic of the early ADC programs was "their preference for the 'worthy' poor." 392 U.S. at 320. Some persons "were thought unworthy because of their supposed incapacity for 'moral regeneration'." *Ibid.* Particular policies were thus developed to exclude such persons, including the so-called "suitable home" policies designed to exclude children because of their mothers' allegedly improper behavior. Those provisions came under attack in the 1940's, critics arguing, as this Court observed in *King*

> "that such disqualification provisions undermined the mother's confidence and authority, thereby promoting continued dependency; that they forced destitute mothers into increased immorality as a means of earning money; that they were habitually used to disguise systematic racial discrimination; and that they senselessly punished impoverished children on the basis of their mothers' behavior, while inconsistently permitting them to remain in the alleged unsuitable home." 392 U.S. at 321-22.

In 1945 the Social Security Board recommended the abolition of such provisions (fifteen states followed the suggestion, many others did not).

In the 1950's attempts were made in at least eighteen states to exclude children from AFDC on the basis of their siblings' illegitimate birth. See Bell, *Aid to Dependent Children* (1965),[24] pp. 72-73; *King v. Smith*, 392 U.S. at 322. Although the federal agency disapproved illegitimacy exclusions *per se* in 1960, and "suitable home" policies in 1961 (through the Flemming Ruling which required that no child be excluded from aid on the ground that his home was "unsuitable" so long as the child was still in the home), "substitute parent" regulations—having the same purpose and exclusionary effect—were put into operation by many states. It was the latter regulations which the Court ruled in conflict with the Act in *King*. Observers have concluded that these policies represented a national "trend" of hostility to AFDC mothers and children. See, *e.g.*, Bell, *passim*.

Texas was a prime and vigorous perpetrator of these irrational and counterproductive measures taken against the would-be eligibles for AFDC and against AFDC recipients. Texas was not one of the States which, on HEW recommendation, ended its "suitable home" policy exclusions. That policy was not modified until after the Flemming Ruling in 1961. See Defendants Answers to Written Interrogatories, Ex. I. Texas was one of the eighteen states which, as noted by the Court, attempted to exclude children on the basis of their siblings' birth status. See Bell, *supra*. Texas enacted and enforced one of the nation's most unfair "substitute parent" regulations (which was enforced until shortly after the Supreme Court ruled such regulations illegal, giving rise to the Texas decision to cut AFDC benefits, see *infra*). The Texas regulation required only that there be "ongoing relationship" between a man and a woman "bearing a resemblance to a husband and wife relationship." Where such "a resemblance" was found, all children of the woman were ineligible even though the man was not supporting them, owed them no duty of support and, often, could not support them if he wanted to do so. See Defendants Answers to

[24] Hereafter cited as Bell.

Written Interrogatories, Ex. I. And, of course, the regulation was enforced to exclude thousands of needy children in the loose and wild manner which the language of the regulation encouraged.[25]

The "social prejudice" against AFDC in Texas, as reflected in the state's use of the restrictive eligibility conditions discussed above, is largely intertwined with racial attitudes which are held by the public and which undoubtedly influence the legislature. Both "suitable home" and "substitute father" policies were favorite devices in many states for restricting access to the welfare programs to Whites. See Bell, pp. 175, 181, 186, and *Smith v. King*, 277 F.Supp. 31 (M.D. Ala. 1967), note 7 and *King v. Smith*, 392 U.S. at 321-22.[26] Texas was no exception.

Thus Bell notes that Texas made particularly effective use of "substitute parent" policies to keep illegitimate children

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[25]Thus, for example, in *Rios v. Hackney*, 294 F. Supp. 885 (N.D. Tex. 1967), the court reinstated a needy mother and her unfortunate children to the AFDC rolls on the ground that the decision removing her was so utterly lacking in evidence as to violate the Due Process Clause.

[26]Bell describes this as follows:

> "The long history of 'suitable home' policies has been examined in the effort to isolate their *actual as well as their publicly avowed functions.* The evidence shows that their primary functions were (1) to restrict the growth of the caseload and (2) to inhibit ADC coverage of Negro and illegitimate children who because of their family composition were more apt to qualify than were white children with two able-bodied parents in the house." Bell, p. 175 (emphasis added).

With regard to substitute father rules, Bell also notes that their effect "eventually fell most heavily on Negro families." Bell, p. 186. She noted that

> "The greater difficulty experienced by Negro men in their efforts to support families, the relatively higher risk of marital instability, the scarcity of free legal services for assistance in regularizing marital status, all guarantee that welfare policies of this nature will victimize Negroes most heavily, particularly in the South." *Ibid.*

off the rolls. Bell, p. 223, n. 32.[27] In 1960, more than sixty percent of the illegitimate births were non-white. HEW, Public Health Service, National Center for Health Statistics, "Trends in Illegitimacy, United States–1940-1965," Table 3. This proportion is further exaggerated by the fact that the Black illegitimate children are more likely to have to apply for public assistance for their subsistence. Adoption, a likely prospect for over 30% of illegitimate births in 1961, HEW, Bureau of Family Services, "Illegitimacy and Dependency," p. xxiii (reprinted from HEW *Indicators*, September 1963), is recognized to be much more difficult for Blacks in Texas than it is for Whites, Sarazan Dep., pp. 59-60, and thus recourse for Black unwed mothers to public aid to care for their children is more likely. *Ibid.*

The removal of "suitable home" and "substitute parent" policies in Texas has, clearly, not improved the deep social prejudices held by the public and legislators against AFDC recipients on the ground that they are "unworthy." These social prejudices and their consequences for appropriations for AFDC were made clear by appellee Hackney in his deposition herein. Thus Mr. Hackney testified that there are numerous "myths" about the people on AFDC, that he has talked to people trying to "explode" the myths, that "people do think AFDC rewards illegitimacy" although he denies that it does. Hackney Dep., pp. 47-48.[28]

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[27] According to Bell, as late as 1958 Texas did not require a father to support his illegitimate children. *Ibid.* She quotes the Texas Research League as reporting in 1959 that "the problem is complex for if the mother is forced to support her children and is not equipped to take a job or cannot find one, she will increase her income through attention to men. . . ." *Ibid*, citing Texas Research League, Children's Services of the Texas Department of Public Welfare, Report No. 1 (1959), pp. 64-65.

[28] Indeed, such "myths" as those in Texas have so disturbed the federal agency, that it has recently distributed nationwide a booklet directed at refuting with *facts*, the various irrational prejudices expressed against AFDC recipients. HEW, Social and Rehabilitation

5. *The Texas Dual Welfare System Has Consistently Resulted in Significantly Lower Benefits for AFDC Recipients in Relation to Their Needs Compared to Benefits in the "Adult" Categories*

Reduced payments for AFDC recipients while other programs continue at the same or better payments has not been unusual in the Texas dual welfare system. Thus in the three years immediately preceding the decision below, maximum grants[29] were *increased* three times in OAA while grant maximums in AFDC were reduced twice in the year preceding the decision. Compare the Dept. of Public Welfare 1968 Annual Report, p. 3 with Memorandum E-417 and E-434. Since the state constitution was amended in 1965 to remove ceilings on appropriations for each individual category, and to replace that with an overall ceiling, payments have *never* been reduced in any of the adult categories. We are not suggesting that AFDC payments have never been increased, but rather that AFDC *always* bears the brunt of budgetary crises. Consider the course of the past twenty-two years with regard to reductions in payments in each of the four programs.

Service, "Myths vs. Facts" (SRS) 71-127 (1971). The "myths" challenged included the following:

(1) "Welfare families are loaded with kids—and have more just to get more money";

(2) "Give them more money and they'll spend it on drink and big cars";

(3) "Most welfare children are illegitimate";

(4) "Welfare people are cheats";

(5) "The welfare rolls are full of able-bodied loafers."

[29] Prior to adoption of the new budgetary system, payments were limited by a maximum grant in *all* categories.

Reductions in Payments from 1948 to Mid-1969 (57-62):

PROGRAM	NUMBER OF TIMES PAYMENTS REDUCED, THROUGH USE OF PERCENTAGE REDUCTIONS, FLAT REDUCTIONS OR REDUCTIONS IN MAXIMUM GRANTS
OAA	Five times
APTD	None
AB	Five times
AFDC	Eighteen times

Moreover, the greatest OAA reduction over this period has been $1 per recipient (59), and the greatest in AB, $3 (61). In AFDC, however, across the board reductions have been as high as 16% per family and $16 per family (62). Of course the new method has imposed the greatest reduction ever.

It is also significant that prior to the elimination of AFDC maximums in 1969, the maximum grant limitations were especially more burdensome in AFDC than the adult categories. As noted in the Statement of the Case, *supra*, only 43.6% of AFDC recipients were able to meet their needs in full under the low maximum which was in effect, while 91.8% of OAA recipients, 74.4% of APTD recipients, and 72.4% of AB recipients were able to have 100% of their needs met because of a relatively high maximum. Further, it is worth noting that the family AFDC maximum was *particularly* burdensome to Black and Mexican-American families which were usually larger than White AFDC families and so affected by the maximum, see Stipulation Nos. 38, 39 (74), a fact well known to appellees, Hackney Dep., p. 5.

Finally, the budgetary procedures instituted in May, 1969 illustrate perhaps best of all the dramatic discrimination against AFDC recipients. As of that date, appellees met 100% or 95% of "needs" in the "adult" programs (subject to certain maximums which are sufficiently high so as to prevent few families from reaching the 100% or 95%

levels), and only 50% in AFDC. The overall effect on AFDC checks was as follows:

EFFECT OF FIFTY PERCENT SYSTEM[30]	NUMBER OF FAMILIES
Checks reduced	22,812
Checks increased re remaining the same	approximately 14,000
Grants entirely eliminated	2,472[30a]

It is obvious from all of the above, that far from implementing the common purposes of the public assistance programs, Texas has made a deliberate and consistent effort to use AFDC as the "whipping boy." A budgetary example using the 50% reduction in effect at the time of the decision below will best illustrate our claim.

TABLE I

AGED COUPLE, BOTH RECEIVING OAA, AND RESIDING IN PUBLIC HOUSING AT THE MAXIMUM ALLOWABLE RENT

Personal needs:	
2 adults (*$65 each*)	$130
Shelter	$ 42
Total Monthly Needs	$172

Payment: $172, or 100% of needs.

[30] Stipulation No. 60 (80).

[30a] These 2,470 are also included within the 22,812 listed as having their checks reduced.

TABLE II

MOTHER AND THREE MINOR CHILDREN, ALL RECEIVING AFDC, AND RESIDING IN PUBLIC HOUSING AT THE MAXIMUM RENTAL ALLOWANCE

Personal needs:	
Mother	$ 65
3 children *($25 each)*	$ 75
Shelter	$ 42
Total Monthly Needs	$182

Payment: $91, or 50% of needs; unmet monthly needs of $91.

Thus as Tables I and II graphically demonstrate, families with almost identical monthly needs ($172 for the OAA aged couple and $182 for the AFDC family of four) are provided welfare assistance so grossly disparate that they seem to defy rational justification.

TABLE III

SINGLE ADULT RECEIVING OAA, RESIDING IN PUBLIC HOUSING AT THE MAXIMUM RENTAL ALLOWANCE

Personal needs	$ 65
Shelter	$ 36
Total Monthly Needs	$101

Payment: $101, or 100% of needs.

TABLE IV

MOTHER AND FOUR MINOR CHILDREN RECEIVING AFDC AND RESIDING IN PUBLIC HOUSING AT THE MAXIMUM RENTAL ALLOWANCE

Personal needs:	
Mother	$ 65
4 children *($25 each)*	$100
Shelter	$ 49
Total Monthly Needs.	$214

Payment: $107 or 50% of needs; unmet monthly needs $107.

If the first two examples alone are not persuasive of the irrationality of appellees' determination of grants, the last two are conclusive. Thus, a one person OAA household receives a monthly grant almost equal to that available to a *five* person AFDC household with *twice* the determined needs.[30b] Appellants believe these tables speak for themselves as to the callousness of Texas' policies.

[30b] The utter irrationality of the welfare payment structure in Texas is well illustrated by the following example. An AFDC mother and her minor child are determined to "need" $132 monthly. They would receive at the most $66 per month (and medical assistance). If the child is forced to live with his 65 year old grandmother (because of some misfortune to his mother, for example), the benefits of the concededly *equally* needy ($132) household would be either $119.50 or $132. The result would depend on whether or not the child is considered to be a dependent of an OAA recipient, or an AFDC recipient himself with a non-AFDC caretaker. In the latter situation his portion of the "needs" budget is reduced by the appropriate percentage (50%), while in the former it is maintained at 100%. The needs of this child are *identical* in each case, but the payment determination is made on the basis of a label, *i.e.*, is the child receiving AFDC? To further complicate matters, if the grandmother chooses the route which would gain $12.50 per month, the child is *ineligible* for medical assistance since he is not himself a *recipient*, Chapman dep., p. 29, but if the family accepts the reduction and considers the child an AFDC recipient, he gets *full* medicaid coverage.

The consequences of this sharp differentiation in the percentage of needs met in AFDC as compared to the "adult" programs are dramatic in human terms. Texas' need standards define far from an adequate and comfortable living, but rather provide an AFDC family only the bare rudiments of survival. The hardship created by payment of aid in amounts far less than such determined need does not require extensive elaboration. The following colloquy between the Secretary (John Gardner) and Under Secretary (Wilbur Cohen) of HEW and a former Secretary, Senator Ribicoff, provides a good summary, however:

Senator Ribicoff:	What happens to the child or the adult who receives so much less than what you consider a proper standard? How do they live?
Mr. Cohen:	They have to live on the lesser amount.
Senator Ribicoff:	How do they live?
Mr. Cohen:	They have to cut back on their food and clothing and other needs to live on the amount that the State gives them.
Senator Ribicoff:	Well, is not a study made or do you know what happens to these people? I mean just what is happening to them?
Mr. Cohen:	Well, I think that the evidence shows—I do not have it immediately before me—that many of these children and these families grow up without adequate food, without adequate medical care, and certainly their whole aspirations for improving in their education status are stunted, and I think that the evidence from the State administrators when you hear them will bear that conclusion out.
Secretary Gardner:	It shows up most clearly, I think, in the medical data. You will find a higher incidence of just about every kind of medical disorder and physical handicap in these youngsters—malnutrition and everything else.

Senator Ribicoff: Well, in looking to the cost to society ultimately, the people who are below standard cause a greater drain eventually upon what the society has to pay out in every conceivable way, is that not right?

Secretary Gardner: No question about that, Senator.

Hearings on H.R. 12080, Comm. on Finance, 90th Cong., 1st Sess., August 22, 1967, pp. 258-259.

B. The Substantial Differential In Percentage Of Needs Met Has The Effect Of Disproportionately Burdening Politically Powerless Blacks And Mexican-American Recipients Of Public Assistance, And Thus Must Be Invalidated Absent A Demonstration By Appellees Of A Compelling Interest In Maintaining The Discrimination

Appellants do not claim that any classification may be voided as racially discriminatory upon simple demonstration of (1) different treatment of two groups and (2) a higher incidence of Black-Americans and Mexican-Americans in the disfavored group. Many such classifications would doubtless be valid bases for governmental action. Appellants rather make the much more limited claim that racial discrimination exists here because:

(1) the State has imposed more onerous burdens on a class which is traditionally victimized by social prejudice, which has little political power, and which is overwhelmingly Black and Mexican-American, than upon a similarly situated class which has much more political power, and which is substantially White-Anglo;

(2) the differential racial impact of the measures is well known to the State;

(3) no persuasive justification for the measure has been offered by the State, nor is there one; and

(4) the interest affected is one of fundamental importance to the health and livelihood of the persons involved.

Appellants urge that the showing below was sufficient to have required the district court to apply the more rigorous

standard of review usually applied to racially discriminatory classifications. The district court, however, held that appellants "failed to make a sufficient showing of racial or ethnic discrimination." 304 F. Supp. at 1339. An analysis of the court's reasoning, and of the facts upon which it specifically relied to reach its conclusion, will demonstrate that the court had a fundamental misunderstanding of the tests which this Court has established to guard against racial discrimination perpetrated by state officials.

Appellants have already described the grossly disproportionate burden placed upon Blacks and Mexican-Americans by the state's percentage reduction policy. To sum it up, it is clear that in all "adult" programs, White-Anglos are the majority. In contrast, 8 out of every 9 AFDC recipients are either Black or Mexican-American. When the one large "adult" program is considered, the White-Anglo majority goes up dramatically. Were one to average all "adult" programs together, the percentage of White-Anglo recipients would still be nearly 2 out of 3. Appellants have also established a long history of disfavored treatment by the Legislature with respect to financing the AFDC program, and a clear legislative "preference" for the OAA and other adult programs, and a policy of restricting access by Blacks to the welfare programs by use of rules which were unrelated to financial need, and which primarily functioned to keep as many Blacks as possible off the rolls. Taken together, a *prima facie* case of racial discrimination has been made.[31]

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[31] Two other courts have found no *prima facie* racial discrimination in the payment of a lower percentage of need in AFDC after analyzing the racial composition of each category. The record in this case is substantially better, however. Thus, in *Ward v. Winstead*, 314 F. Supp. 1225 (N.D. Miss. 1970), *appeal dismissed* 400 U.S. 1019 (1971), the court stressed that "while . . . there is a disparity in the percentages of recipients by race under the different programs, nevertheless the majority race under *all* programs is the Negro race." 314 F. Supp. at 1235 (emphasis added). Likewise in *Lampton v. Bonin*, 299 F. Supp. 336 (E.D. La. 1969), the court emphasized that "although it is true that a greater percentage of the ADC recipients are Negro, this does not change the fact *that a majority of the recipients in all*

It is of course no roadblock to appellants' claim that the statutes and regulations which we challenge do not overtly define the disfavored class in terms of race. This Court has specifically recognized that a state welfare statute which is "infected with a racially discriminatory purpose *or effect*" would be "inherently suspect" and subject to a rigid judicial review. *Dandridge v. Williams, supra,* 397 U.S. at 385, n. 17 (emphasis added). Thus even a regulation or statute neutral of its face, as in *Dandridge* and the present case, would be unconstitutional if either its natural effect or its administration, see *Yick Wo v. Hopkins,* 118 U.S. 351 (1996), resulted in discrimination against ethnic minorities. See also *Patton v. Mississippi,* 332 U.S. 463 (1947). Just last term, in *Griggs v. Duke Power Co.,* 401 U.S. 424 (1971), this Court held, for example, in an action arising under Title VII of the Civil Rights Act of 1964, that whether an employer intended to discriminate on the basis of race when he instituted certain standards for promotion was irrelevant. If the exclusionary *effect* of the employment practice was greater with regard to Black as opposed to White employees, the Act was violated. Moreover, once such a discriminatory effect was established, the burden fell on the employer to provide a valid business justification for the practice.[32] And in another

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the non-OAA categories are Negroes," and that in the OAA category only "52% of its recipients—no more than a bare majority—are white." 299 F. Supp. at 344 (emphasis added). In this case, the significant programs in size, AFDC and OAA (and to a lesser extent APTD), were burdened or favored in direct proportion to the percentage of Blacks and Mexican Americans in the programs.

[32]Although *Griggs* arose under Title VII, its standard is equally applicable in a case arising directly under the Fourteenth Amendment. Thus, in cases involving discrimination in public employment where only Fourteenth Amendment rights were asserted, it has been held that purposeful intent to discriminate on the basis of race need not be alleged or shown, *Penn v. Stumpf,* 308 F. Supp. 1238 (N.D. Cal. 1970); *Chance v. Board of Examiners,* 330 F. Supp. 203 (S.D. N.Y. 1971), and that the burden of justifying the employment practice in non-racial terms shifted to the defendant. See especially *Chance v. Board of Examiners, supra.*

case last term, *Palmer v. Thompson*, *supra*, which involved the question of whether the closing of public swimming pools in order to avoid their desegregation violated the Fourteenth Amendment, this Court held that it did not since the record did not establish "state action affecting Blacks differently from Whites." 403 U.S. at 255-56. The Court specifically noted that

> "the focus of [*Griffin* and *Gomillion*][33] was on the actual effect of the enactments, not upon the motivation which led the states to behave as they did." *Ibid.*

The district court, however, relied on its finding that "the defendant did not know the racial makeup of the various categories prior to or at the time when the orders here under attack were issued." 304 F. Supp. at 1340. The court obviously believed that proof of discriminatory *intent* was necessary in order for appellants to prevail. We have three separate responses. First, the unequal treatment in this case, when considered against the long history of discrimination against AFDC recipients through "substitute parent" and other devices, all of which primarily affected Negroes and Mexican-Americans, would reasonably permit an inference of an intent to discriminate racially. Moreover, we find it incredible that welfare officials and caseworkers—with a duty of interviewing all recipients—would not have a general notion of the different racial composition of the program. Indeed, in his testimony taken on May 1, 1969, appellee Hackney explained that the new budgeting policy instituted that day would primarily benefit the minority groups since they tended to make up most of the larger family units, those particularly hurt by the prior system of maximum grants. Hackney deposition, p. 83: How did the State Director know this fact if he was unaware of the racial composition of his welfare programs? Second, appellees know of the discrimination *now*, but they have not remedied it, over

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[33] *Griffin v. Prince Edward County*, 377 U.S. 218 (1964); *Gomillion v. Lightfoot*, 364 U.S. 399 (1960).

two years since the court's decision.[34] Finally, and clearly most importantly, the *motive of state officials is constitutionally irrelevant.* As we have shown, it is the result or effect of their conduct that matters. Since this principle is crucial to an understanding of the nature of the discrimination under attack here, we set out in some detail the reasons this Court refuses to look at motivation in analyzing classifications under the Fourteenth Amendment.

1. Motivation is hard to prove. Those who would discriminate today on grounds of race are the beneficiaries of considerable sophistication in the art, which has advanced since the days of the Black Codes. Racial distinctions no longer appear on the face of laws or regulations, and discriminators no longer overtly profess that their decisions are racially based. As noted in *Palmer*, "[I]t is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choice of a group of legislators." 403 U.S. at 225.[35]

2. "Equal Protection of the Laws" should protect Blacks and other minority groups against irrational and thoughtless racial discrimination as well as intentional discrimination. The Second Circuit summed it up in *Kennedy Park Homes Association v. Lackawanna*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971) as follows:

> "Even were we to accept the allegation that any discrimination resulted from thoughtlessness rather than a purposeful scheme, [the state] may not escape

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[34] The district court relied in part on the fact that appellees promised to remedy the differential in percentages upon passage of a Constitutional amendment permitting an increase on welfare spending. 303 F. Supp. at 1340. The amendment passed, and the discrimination persists. Appellants discuss this *infra* in our analysis of the district court's findings.

[35] It was just this consideration, coupled with a realistic appreciation of the impossibility of extracting an admission of discrimination from the covert discriminators, that led to this Court's development of the doctrine that a *prima facie* showing of discrimination *can* be made objectively and statistically. See *infra*, p. 51.

responsibility for placing its Black citizens under a severe disadvantage which it cannot justify." 436 F.2d at 114.[36]

3. The ordinary political processes cannot be relied upon to protect the poor and minority groups from discriminatory legislation, since such "discrete and insular minorities" play little role in that process. Cf. *United States v. Carolene Products*, 304 U.S. 144, 152-53, n. 4 (1938)[37] and *Graham v. Richardson*, 403 U.S. 365, 372 (1971). Thus, appellees themselves urge that the legislation here challenged may be attributed to legislative "preference" for the OAA program, and to the voting power of aged recipients. It may well be that a majority of legislators are not "anti-Black" or "anti-Mexican," but in voting the interests of their very vocal (and White) constituents they may well do as much harm to those individuals as if they intended the result.[38]

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[36] See also *Hawkins v. Shaw*, 437 F.2d 1286 (5th Cir. 1971); *Norwalk Core v. Norwalk Redevelopment Agency*, 395 F.2d 970 (2d Cir. 1968); *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom. Smuck v. Hansen*, 408 F.2d 175 (D.C. Cir. 1969).

[37] "Prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied on to protect minorities, and which may call for a correspondingly more searching judicial inquiry." 304 U.S. 144, 152-153, n. 4.

[38] Judge Wright stated the problem in *Hobson* as follows:

> "Judicial deference to these judgments is predicated in the confidence courts have that they are just resolutions of conflicting interests. This confidence is often misplaced when the vital interests of the poor and racial minorities are involved. For these groups are not always assured of a full and fair hearing through the ordinary political processes, not so much because of the chance of outright bias, but because of the abiding danger that the power structure—a term which need carry no disparaging or abusive overtones—may incline to pay little heed to even the deserving interests of a politically voiceless and invisible minority. These considerations impel a closer judicial surveillance and review of administrative judgments adversely affecting racial minorities and the poor, than would otherwise be necessary." 269 F. Supp. at 507-508.

4. If legislative motive were a key to a finding of racial discrimination, the legislature could quickly remedy the "problem." This Court, again in *Palmer*, noted that

> "there is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for this reason, rather than because of its fiscal content or effect, it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons." 403 U.S. at 225.

In short, Texas' welfare policies must be analyzed in terms of how they affect recipients, not in terms of the lack of overt bias on the part of state officials. As long ago as 1935 this Court recognized that mere protestations of good faith cannot destroy a *prima facie* case of discrimination, for otherwise the 14th Amendment "adopted with special reference to their [Black citizens] protection—would be but a vain and illusory requirement." *Norris v. Alabama*, 294 U.S. 587, 598 (1935). The district court neglected to apply this principle in reaching its decision.

Finally, appellants' reliance on statistical evidence to establish their *prima facie* case of racial discrimination is not unusual. The rule that statistical evidence of unequal treatment of racial minorities may be used to prove the constitutional infirmity of a policy which is on its face neutral, has been applied many times by this Court. See, e.g., *Turner v. Fouche*, 396 U.S. 346 (1970); *Green v. School Board*, 391 U.S. 430 (1968); *Sims v. Georgia*, 389 U.S. 404 (1967); *Whitus v. Georgia*, 385 U.S. 545 (1967); *Jones v. Georgia*, 389 U.S. 24 (1967); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Hernandez v. Texas*, 347 U.S. 475 (1954); *Eubanks v. Louisiana*, 346 U.S. 584 (1958); *Norris v. Alabama*, 294 U.S. 587 (1935); cf. *Griggs v. Duke Power Co.*, *supra*.[39]

[39] A few examples will be helpful. Thus in *Jones* the Court held a case of discrimination made out *solely* on the basis of statistical disparities between the percentage of Negro taxpayers and the percentage of Negroes on the jury list and box. In *Whitus*, the Court found that the disparity between the percentages of Negroes on the tax digest (27.1%), on the grand jury venier (9.1%), and on the petit jury

We believe that whenever it appears that a particular minority is substantially underrepresented in a group receiving favored treatment under state laws or practices, and overrepresented in a group receiving less favored treatment, particularly when such treatment comes in the context of a long history of discrimination, the inference must be drawn that the state is drawing the racial line unless it offers a compelling justification for the differential in treatment, a showing which must of course rely on non-racial factors. See generally for a good discussion on this question, Fessler and Haar, "Beyond the Wrong Side of the Tracks: Municipal Services in the Interistics of Procedure," 6 Harv. Civil Rights, Civil Liberties L. Rev. 441 (1971). "[F]igures speak, and when they do, Courts listen." *Brooks v. Beto*, 366 F.2d 1, 9 (5th Cir. 1966); *Hawkins v. Shaw, supra.* See also *Alabama v. United States*, 304 F.2d 583, 586, (5th Cir.), *aff'd.* 371 U.S. 37 (1962). The lower court failed to listen, but instead relied on evidence which supported *at best* a finding of good faith, at worst, an inference of bad faith, and in any case, failed to rebut in any way appellants' factual presentation.

The district court's analysis of the record was taken entirely out of context, and demonstrated a misunderstanding of the issue before it. It will be helpful to consider each piece of evidence upon which the court relied. First, however, it is well to point out that the court's mistaken reliance on legislative motive is not evidenced merely by its articulation of this theory in finding number 11, 304 F.

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venire (7.8%) was indicative of discrimination noting the mathematical probability of such disparities occurring by chance. The *Turner* case is particularly instructive here. In *Turner*, and in its companion case, *Carter v. Jury Commissioners of Green County*, 396 U.S. 320 (1970), the Court held that standards that jurors be intelligent and upright were not unconstitutional on their face, since they were racially neutral and capable of fair administration. However, in *Turner*, in the application of these standards, 96% of those rejected in a revision of the jury lists were Black. The court held that such a showing of a racially disparate impact in the administration of the standard cast the burden on the state of providing a constitutionally acceptable reason for the result.

Supp. at 1340. In reviewing the court's findings, we ask this Court to note how each and every finding represents *only* evidence of "good faith." None of the facts relied upon by the lower court demonstrate an absence of discriminatory effect, or provide a justification for that effect.

Finding numbers 1, 2 and 3: The district court considered it relevant that the legislature has never reduced the total amount of money appropriated for AFDC, and since 1943 had increased total funding five times, and since 1959, twice. This case does not involve an abstract challenge to line items on a budget, however. It involves children, and the level of their subsistence grants. It is of no concern to them, nor does it cure the discriminatory action taken against them *as individuals*, that the "category" of AFDC has not itself been reduced. The facts as set out above are that actual AFDC grants to families have been reduced eighteen times since 1948 in response to fiscal emergencies, compared to only 5 for OAA, and not a single OAA recipient has suffered a reduction in grant since 1965, when the legislature was first authorized by the Constitution to appropriate as much as it wanted to for each category (as long as *total* assistance expenditures did not exceed the ceiling).

Finding numbers 4 and 5: The district court observed that since 1943, AFDC appropriations have increased 410% compared to an increase of 211% for OAA and 200% for AB and, since 1963 AFDC appropriations increased 58% compared to 13% in OAA and 183% in APTD. Here again the court mistakingly dealt with the discrimination in terms of total state funding rather than its impact on the individuals involved. The differential in rate of increase of appropriations at best indicates a different rate in growth of the respective programs, rather than relatively fairer treatment to AFDC recipients. Indeed, the figures ignored by the lower court revealed that since 1943, while OAA appropriations doubled, the number of OAA recipients increased only by one-third, whereas the percentage increase in AFDC appropriations was almost matched by the increase in num-

bers of recipients.[40] Moreover, since 1963, when total OAA appropriations increased by 13%, the OAA population remained virtually static, whereas AFDC appropriations again merely kept pace with the increase in program growth.[41]

Finding 6: The district court congratulated appellees for abolishing the maximum grant system on May 1, 1969, and in the process raising grants for those "large family groups receiving AFDC assistance grants [who] are predominantly Negro and Mexican-American." 304 F. Supp. at 1340. First, this is double-think at its best—evidence of the elimination of one aspect of prior racial discrimination has been used to rebut a charge of discriminatory conduct which was the result of that change. Moreover, the maximum was abolished precisely because appellees, under threat of a court order, believed it to be unconstitutional.[42] To argue, in such a context, that the adoption of the 50% reduction in AFDC in place of the maximum rebuts our constitutional attack is nonsense.

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[40]Stipulation 51a (78) indicates that the number of OAA recipients increased by 33.5% since 1944, while AFDC grew by 310.3%, a rate of growth almost ten times that in OAA, compared to an appropriations growth only twice OAA's.

[41]Stipulation 53a (79) indicates that since 1964 the OAA rolls have expanded by only 0.024%, compared to a 62.7% increase in the AFDC rolls.

[42]Appellee Sarazon testified that "a number of lawsuits throughout the United States . . . have been recently decided in a manner that would indicate that it will be compulsory quite soon, if indeed it is not now, to recognize the children individually . . . . Sarazon Dep. p. 37. The 1969 Annual Report of the Department of Public Welfare specifically states at page 4:

> "The Department's elimination of the maximum grant limitation in AFDC, effective May 1, 1969, came while a suit challenging the validity of the maximum grant method was pending in a U.S. District Court in Houston (*Robinson v. Hackney*) and was made in anticipation that this would become a new Federal requirement."

Finding numbers 8 and 9: The district court, in an exercise in wishful thinking, relied upon a promise by the state to raise AFDC grants to 100% of need if a then pending Constitutional amendment were approved by the voters. The amendment would have raised the constitutional ceiling on total public assistance appropriations from $60,000,000 to $80,000,000. Expected appropriations increases were to be $15,000,000 as a result, and $11,900,000 of that amount to the AFDC program. The amendment did, in fact, pass, but AFDC grants were only raised to a maximum of 75% of need, and thus the discrimination continues.[43] Moreover, the $4,000,000 increase in "adult" appropriations was sufficient to *raise* many OAA, AB and APTD grants, since simultaneously with the increase to 75% of need in AFDC, OAA, AB and APTD maximum grants were raised $14-$16 per month. See Texas Department of Public Welfare, Annual Report, 1970, p. 2.

Even if it is assumed (which appellants do not in light of the above facts) that the recent allocation of newly appropriated funds was not by itself racially discriminatory, that would not be sufficient to excuse the continuing discrimination in the percentage of needs met in the various programs. A rational classification is "insufficient in itself to meet constitutional standards if its effect is to freeze-in past discrimination." *Henry v. Clarksdale Municipal Separate School District*, 409 F.2d 682, 688 (5th Cir. 1969); *Hawkins v. Shaw, supra. Cf. McDaniel v. Barresi*, 402 U.S. 39 (1971); *Board of Education v. Swann*, 402 U.S. 43, 46 (1971); *Green v. County School Board*, 391 U.S. 430 (1968). The legislature has merely freezed in the results of past discrimination. Thus, AFDC appropriations which have been disproportionately low in relation to the relative sizes of the various programs, formed the base upon which the "new money" was added. If the present Texas Constitution placed

[43] This proves the fallacy of looking at modifications in total expenditures without analyzing the impact on actual grant levels.

a ceiling on AFDC appropriations as it once did for all the categories, one might sympathize with (but not condone) the legislature's predicament. But the legislature now has complete power to reallocate total public assistance appropriations in order to rationalize the distribution of those funds.[44]

Finding number 10: The district court was also persuaded by the fact that recipients in the AB program were being paid 95% of need, and were majority Black and Mexican-American (54.2% Black and Mexican-American and only 44.3% White-Anglo). 304 F. Supp. at 1340. These pale by comparison to the figures for the AFDC programs (87% Black or Mexican-American; 13% White-Anglo). It should be emphasized that there are only 4,154 AB recipients, stipulation 26 (71), little more than one percent of the total welfare population in Texas. Moreover, blind recipients hardly suffer from the social prejudice which has traditionally been the lot of the broken families receiving AFDC.

There can be no real dispute as to the content of the review required should this Court agree with appellants that a *prima facie* case of racial discrimination has been made.

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[44]Appellee Bond testified that if the Legislature appropriated a single amount (which it may do) for distribution by appellees, the percentage control factor will "go across the board on all categories." Unfortunately Mr. Bond didn't anticipate that happening very soon. Bond Dep., p. 29. The Legislature's real reason for not reallocating the funds in order to better rationalize the Texas public assistance program may well be, in addition to the usual political "preference" for OAA, a concern that such a reallocation will injure many needy OAA recipients, who have traditionally received 100% of need and are used to receiving a certain grant level. This "reason" does not withstand scrutiny. First, OAA grants have actually been increased in recent years. Second, since the OAA program is significantly larger than the AFDC program, a very *small* percentage reduction in OAA payments will permit a concomitantly large increase in the AFDC percentage, and a levelling off at a relatively high payment level. Lastly, tradition or custom cannot legitimize a course of conduct which by itself otherwise offends the 14th Amendment. See *Eubanks v. Louisiana*, 356 U.S. 584 (1958).

Because of the Fourteenth Amendment's overriding purpose to secure racial equality, "racial classifications [are] 'constitutionally suspect' . . . and subject to the 'most rigid scrutiny' . . . *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964); *Korematsu v. United States*, 323 U.S. 214, 216 (1944); *Bolling Sharpe*, 347 U.S. 497, 499 (1954). Official conduct which discriminates along racial lines thus bears a "very heavy burden of justification." *Loving v. Virginia*, 388 U.S. 1, 9 (1967).

This Court has required a two-part test to be followed in reviewing a state statute under this rigorous standard. First, the particular classification must be necessary to achieve a permissible state objective, and second, the state objective allegedly furthered by the statute must satisfy a *compelling state interest*. See, *e.g.*, *Graham v. Richardson*, 403 U.S. 365 (1971); *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Shapiro v. Thompson*, 394 U.S. 618 (1968); *McLaughlin v. Florida*, *supra*; *Loving v. Virginia*, *supra*; Michelman, *The Supreme Court 1968 Term—Forward: On Protecting the Poor Through the Fourteenth Amendment*, 83 Harv. L. Rev. 7, 20, 34 (1969).

If the district court had applied this standard the substantial percentage disparity could not have passed muster. The justifications hypothetically offered by appellees in support of the discrimination were not demonstrated to have been in fact relied upon by the state as a basis for establishing the discrimination, nor was the percentage disparity shown to be necessary to accomplish any compelling state interest. See *Shapiro v. Thompson*, *supra*; Fessler and Haar, *supra*, 6 Harv. Civil Rights Civil Liberties L. Rev. 441, 444-45. The asserted justifications are, in appellants' view, so utterly irrational, and ill-suited to service any proper objective of the Texas Public Welfare Act of 1941 or the Social Security Act, that we deal with them in section C, *infra*, in our discussion of the traditional equal protection test.

In sum, then, appellants do not contend that Texas may not reduce welfare payments to eligible recipients, nor do

they contend that a desire to conserve funds may not justify payment of less than 100% of need to all recipients. Their plea to this Court is simply that absent a compelling justification, Texas may not accomplish such a reduction in payments in a manner which is grossly discriminatory to Black and Mexican-American recipients. They contend that if Texas wishes to cut welfare costs, it may do so in a way which does not have the effect of singling out racial and ethnic minorities for hunger and malnutrition.

C. The Payment Of A Lower Percentage Of Determined Need To AFDC Recipients Than To OAA Recipients Is Not Rationally Related To Any Purpose Of Either The Texas Public Welfare Act Or The Social Security Act

Appellants are well aware that nothing in the Fourteenth Amendment deprives Texas "of the power to treat persons in different ways." *Reed v. Reed*, 40 U.S.L.W. 4013, 4014 (Nov. 22, 1971). Thus, the mere fact that AFDC recipients are affected differently by Memoranda E-430 and E-434 (setting the percentage reduction in AFDC and maintaining OAA at 100% of need) does not *per se* render the practice invalid. See *Kotch v. Board of River Port Pilot Commissioners*, 330 U.S. 552, 556 (1947). It is settled beyond serious contention, however, that state classifications do violate the equal protection clause when they do not "rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed," and when they are "made arbitrarily and without such bases." *Gulf, Colorado and Santa Fe Ry. v. Ellis*, 165 U.S. 150, 155 (1897). This principle has received consistent application by this Court, most recently in *Reed v. Reed*, *supra*:

> "The Equal Protection Clause . . . [denies] to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated

to the objective of that statute." 40 U.S.L.W. at 4014.[45]

The question presented by this case, then, assuming the Court does not find a *prima facie* case of racial discrimination, is whether the payment of 50% of monthly subsistence needs (as determined by the state) to one group of needy and dependent welfare recipients, and 100% of the monthly needs to another group of needy and dependent recipients based solely on the *source of their dependency*, not the extent of their need, is "rationally based," *Dandridge v. Williams, supra*, 397 U.S. at 487, in light of the purposes of the Texas public assistance program.

The central purpose of any public assistance program is to relieve acute financial need. Texas' program is no exception. Thus, as noted above in Point I, section A, the general purpose clause of the Texas Public Welfare Act of 1941 describes the legislative intent as the creation of a "program of social security." Art. 695c, §35. Each and every category of assistance defines as the target of its benefits individuals who do not have "sufficient income or other resources to provide a reasonable subsistence compatible with decency and health." Art. 695c, §12(5) [AB]; §16-A [APTD]; §17 [AFDC]; §21 [OAA].[46] The various Social Security Act titles which provide the source for more than two-thirds of Texas' public assistance funds, also state as their uniform purpose the provision of financial assistance to needy individuals. See 42 U.S.C. §§301, 601, 1201, 1351.

One would think in light of this rather obvious public assistance function that appellees would find it necessary to

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[45]The reason for this requirement is to ensure that "all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

[46]The APTD and OAA sections are worded slightly differently but also refer to a subsistence with "decency and health."

justify a *limitation* on meeting need in terms of some other statutory objective than the one designed to relieve need.[47] Three of appellees' four defenses to the percentage disparity, however, are need-related, and are intended by appellees to demonstrate the proposition that AFDC mothers and their children need a lesser part of what Texas calculates as their minimum standard of need than do other recipients of public aid in Texas. They appear in appellees' amended answer (54). The fourth "justification" is primarily a fiscal one. Appellants will demonstrate the insufficiency of each of these rationalizations, and will then consider in some detail a fifth rationale, which the district court relied upon in denying appellants relief.

(a) *The aged, blind and disabled are normally unable to supplement grants by earnings, while many AFDC children can be and are employed:* The first reason is based on an assumption of earnings capacity. First, it is essential to bear in mind that a recipient's income is taken into consideration in computing the welfare grant in *all* programs. 42 U.S.C. §§302(a)(10)(A), 602(a)(7), 1202(a)(8), 1352(a)(8), Memorandum E-430 (101). Thus, if employed, earnings are subtracted from the welfare standard before the computation of the grant. Indeed, only in AFDC is the standard reduced in half *before* income is subtracted. A percentage reduction is not necessary, then, in order to take into account the availability of earnings, nor will it accomplish that objective.[48] Moreover, assumptions of income not *actually* available violate the Social Security Act. 45 C.F.R. §233.20(a)

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[47]The district court did consider the relationship of the percentage disparity to a non-need related purpose, which we discuss in detail *infra*, p. 70.

[48]Perhaps Texas is trying to recoup some of the money it was required to spend by virtue of the federal requirement, first effective at the same time as the new budget policy, that a portion of AFDC earned income be disregarded. 42 U.S.C. § 602(a)(8). Such a basis for a classification would not suffice since that state objective is an impermissible one under federal law.

(3)(ii); *Lewis v. Martin*, 397 U.S. 552 (1970); *King v. Smith*, *supra*.

In addition, we note that appellees only rely on the earning capacity of AFDC *children* as a justification for the reduction. With respect to children under fourteen, HEW has determined that any such earnings are so negligible that states may make no inquiry whatsoever as to such earnings. 45 C.F.R. §233.20(a)(3)(iii). Moreover, with regard to older children who are still in school, federal law fully exempts from consideration "all of the earned income" of such child. 42 U.S.C. §602(a)(8)(A). To the extent that appellees' first reason is based upon the employability of AFDC children as opposed to an assumption of current earnings by them, we note that a child not in school who refuses a job offer without good cause loses *all* AFDC benefits. Stipulation No. 64 (81). Thus the percentage reduction device is not a rational "whip" or work-incentive—more drastic penalties are in store for the child who does not cooperate.

While appellees rely only on the earnings capacity and employability of children, it will be useful to consider the situation of AFDC caretakers. Fifty-five percent of the AFDC mothers in Texas have no employment whatsoever, according to appellees' own reports (and their stipulation)—because of physical and mental reasons or because there is no work available, they have no marketable skills or they are needed in the home.[49] Appellees in fact have stipulated that half of the AFDC caretakers are too uneducated or handicapped to hold even the lowest paying jobs. Stipulation 90 (86). Moreover, as in the case of a child, an AFDC mother who *is* able to work and refuses a job without good cause loses *all* benefits. Stipulation No. 64 (81). Here too, then, the percentage reduction does not operate as an incentive to seek employment.[50]

[49]Dept. of Public Welfare, Annual Report, 1968, p. 15. Financial Services Handbook, § 2236.3; Stipulation 84 (87).

[50]It should be noted that a state AFDC plan which denies or reduces benefits on the basis of an assumption that work is available

There are obviously those who qualify for aid in *all* categories who are employed or employable. A majority in *all* programs, however, are unemployed. Stipulation 84 (87). Appellees have singled out AFDC mothers to bear the brunt of their assumptions and prejudices, and the district court was willing to accept this despite the evidence in the record to contradict these assumptions. Incredibly, the district court accepted the "whip" theory on the ground that while it may be based on assumptions not supported by the stipulations, such facts "may not have been known to the legislators." 304 F. Supp. at 1338, n. 4.[51] If *Dandridge* is read to permit *any* speculative hypothesis, despite evidence which contradicts its premise and despite a lack of evidence that the legislature ever considered the purported "reason", states will be given not only "wide latitude" but a constitutional carte blanche to distribute welfare resources. Indeed, Texas' grant computation method (discussed in detail in Point II), which subtracts income *after* the standard of need is reduced, negates the work incentive this Court found in *Dandridge*, since when income is subtracted from the grant (as opposed to the standard of need before computation of the payment), a recipient cannot raise her "real income" by employment.[52]

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to "many" of them clearly conflicts with the requirements of the Social Security Act that AFDC aid not be reduced to any mother because of work "availability" unless a series of specified conditions are met. See 42 U.S.C. § 602(a)(15), (19) and 42 U.S.C., 603 *et seq.*

[51] This statement was made with stipulation 90 in mind, regarding the fact that 50% of the caretakers could not qualify for even the lowest paying jobs.

[52] In *Dandridge* the court noted that "[b]y combining a limit on the recipient's grant with permission to retain money earned, *without reduction in the amount of the grant*, Maryland provides an incentive to seek gainful employment." 397 U.S. at 486. This incentive was accomplished since income in Maryland was subtracted from the state standard of need, and the maximum operated to limit the amount of determined need which could be paid. The more income a family earned, the lower the budget deficit or "need" would be, and consequently since there was no reduction in the amount of the grant

(b) *AFDC families are more likely to receive support from legally responsible relatives than are aged, blind or disabled recipients.* As noted above, all income is considered in computing the grant. Thus to the extent there is actually any support available to an AFDC family,[53] it will be subtracted dollar for dollar from the grant. Stipulation No. 67 (82).[54] In addition, it is worth emphasizing that if there is any greater likelihood of relative support in AFDC it may well be the result of intentional state policy designed to discourage relative support of the aged. Thus, Texas law specifically mandates that "no inquiry shall be made into the financial ability of [a] child or other relative, except husband or wife, in determining [an OAA] applicant's eligibility," Public Welfare Act of 1941, Art. 695c, § 20(4), and that assistance shall not be denied even if a child or relative of an OAA applicant "is able to contribute to the applicant's support." *Ibid.* Appellants do no suggest that Texas should deny public assistance to such aged citizens—it may be sound public policy to free children from such a support obligation.[55] The fact is, though, that if Texas wanted to encourage private support in order to free public funds where such support is not available, it could apply a 50 percent reduc-

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there would be a greater likelihood of attaining sufficient total income to reach the standard of need. In Texas, no family can even reach the standard of need by employment since the 50% reduction is applied to the standard itself.

[53]The fathers of one fourth of all AFDC children are either dead, incapacitated or in prison. Stipulation No. 87 (86). Only 15% of AFDC families actually receive support from a father. Stipulation No. 77 (83).

[54]If appellees prevail on their statutory claim under § 402(a)(23), then fathers will have an incentive to support their families if they are able to, since that support will help raise their families up to the minimum standard of need. Under the present system, the support is deducted *after* the percentage reduction is applied, so the family can never attain more than 50% of need.

[55]Of course, given the racial composition of OAA in Texas, and the political preference for that group, we may assume the children also wield some political influence.

tion to OAA grants. We may be assured that most of those children who could, would quickly come to the support of their aged parents in such circumstances. Of course such a policy is grossly unfair, since it penalizes those aged individuals whose children cannot or will not support them. Yet that is what appellees have done to Texas' needy children. It has cut their grants in order to convince mothers to work (most of whom are unemployable) or fathers to provide support (which if available could be obtained under the civil support laws).

Finally, if Texas' policy is designed to account for non-welfare income, it should be noted that recipients of the "adult" programs (particularly OAA) have a *major* source of income not available to most AFDC recipients—the federal old age insurance program (OASDI), 42 U.S.C. § 201 *et seq.*[56] As with all other income, such income is subtracted from the standard of need before actual individual "need" is determined. We do not here emphasize the major scope of the income available to old age (and other adult programs) recipients from the federal OASDI program in order to suggest that old age recipients should suffer grant cuts rather than AFDC recipients. Such a suggestion would be as frivolous and indecent as appellees' reason for cutting AFDC grants (some mothers and children have some income from work or parental support).[57]

[56] 54.7% of OAA recipients receive some social security. Stipulation No. 77 (83). 30.7% of AB recipients, and 25.6% of APTD recipients receive some OASDI, while only 9.7% of AFDC recipients receive social security. Dept. of Public Welfare, Annual Report, 1968, p. 6.

[57] Indeed, even assuming that the percentage reduction device is rational in light of the assumed availability of income, it is questionable whether or not it may be applied only to AFDC on the basis that most AFDC income is earned, while in OAA, it is usually "unearned" (OASDI). See *Anderson v. Burson*, 300 F. Supp. 401 (N.D. Ga. 1968) (three-judge court) which held that a denial of wage supplementation on the basis of the source of the income was unconstitutional in light of the purposes of the Social Security Act, *i.e.* to relieve financial need. Cf. 45 C.F.R. § 233.20(a)(I).

(c) *AFDC recipients will hopefully have future gainful employment, whereas the aged, blind and disabled will normally always require assistance:* Apart from the complete lack of a rational relationship between reducing *current* AFDC financial benefits because of the "hope" that self-support may be a *future* possibility, the Social Security Act flatly prohibits such a procedure. State OAA, AFDC, AB and APTD programs are required to provide that "only such net income as is actually available for *current use* on a regular basis will be considered, and only *currently* available resources will be considered." 45 C.F.R. § 233.20(a)(3)(ii)(c) (emphasis added). See also *Lewis v. Martin, supra; King v. Smith, supra.* The welfare grant is designed to sustain life *now;* a fifty percent reduction will most likely prevent the children from ever achieving their alleged "potential" for future self-care. Thus appellees have stipulated that

> "proper food and education are vital for children receiving AFDC. The younger the child receiving AFDC the more it would benefit from the help the state can provide through AFDC." Stipulation No. 97 (87).

Moreover, appellees stipulated that

> "when a child receiving assistance reaches school age much of what the State Welfare Department can offer comes too late. Children receiving State Welfare grants need state help as toddlers through proper nutrition and environment so that they will be ready for school when they get there." Stipulation No. 98 (87).

AFDC reductions in current grants on the basis of future "potential" is not only irrational in view of the purposes of the program, but it apparently is counterproductive to the very assumptions upon which appellees rely.[58]

[58] Even assuming *potential* for future self-care is a relevant factor in determining the percentage of *current* needs which will be met, Texas has concluded that recipients in *all* categories have that potential. Thus welfare officials are directed to provide social services "with the fundamental objective of assisting those who need them to return to independent economic, social and emotional functioning."

(d) *Since AFDC is the program with the rising rolls, AFDC children should bear the burden of the cost of rising rolls:* In this point, we consider the other reason conjured up by appellees, but not pleaded. This argument has two parts: (1) since a fixed sum is appropriated by the Legislature for each category, there is no alternative to spreading increased AFDC costs among AFDC recipients; (2) it is only fair that AFDC recipients bear the burden of rising AFDC rolls.

The reasoning with regard to appropriation is circular. It assumes the validity of the original allocation of the lion's share of the available money to adult programs, leaving only minor leftovers to be divided among increasing numbers of children.[59] This is the very assumption appellants challenge. They challenge not only appellee Hackney's administration of the appropriations, but also state statutes which restrain him from spending more than $6,150,000 on AFDC out of $60,000,000 allotted for the four programs (45). It is of particular relevance that while Mr. Hackney concedes that he knew that AFDC rolls were rising during the past few years, and only once did the Legislature appropriate less than he requested, he nonetheless did not request more AFDC funds. See Hackney Deposition, p. 37; Stipulation No. 45 (76). Indeed, in response to counsel's inquiry in this regard, Mr. Hackney could only say "no comment." Hackney Deposition, p. 38.[60]

Financial Services Handbook, § 3100. Caseworkers are reminded that "to render these services effectively requires alertness, imagination and conviction that *most people have a potential of some kind for self help.*" *Id.* at § 3152.41 (emphasis added).

[59]As noted above, the Legislature now has the state Constitutional authority to distribute welfare funds among the categories in any way that it wants, as it is limited only in the *total* sum it may appropriate.

[60]The colloquy on this point tells much about the invidiousness of the discrimination against AFDC recipients:

> "Q. I am still rather curious about the fact that with the projected increases, and almost inevitable increases, in the number of children on the rolls, with the almost inevitable

Moreover, the proposition that it is "fairer" to reduce AFDC grants because the AFDC rolls have increased, assumes that there is some rational distinction between an AFDC-eligible and an OAA-eligible in terms of the financial assistance purposes of the programs. This merely begs the question in this case. Thus if more and more children apply for assistance in Dallas than in Austin, it surely would not be rational to reduce the grants in Dallas, *unless subsistence needs were determined to differ in Dallas. Cf. Rothstein v. Wyman*, 303 F. Supp. 339 (S.D.N.Y. 1969), *vacated and remanded for initial consideration of statutory claim*, 398 U.S. 275 (1970); *Boddie v. Wyman*, 434 F.2d 857 (2d Cir. 1970), *aff'd mem.*, 402 U.S. 991 (1971). Why then reduce AFDC grants (rather than *all* grants) to accomodate increases in AFDC rolls, absent a showing that AFDC and OAA recipients have different needs, or that such reductions would serve some other proper governmental objective.[61]

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increase in the cost of living, the figures I have available to me show that this Department has repeatedly requested much lower amounts of money for AFDC, and it repeatedly got much lower amounts of money for AFDC; and in only one year, the year 1968, within the last five years did this Department request more money than was appropriated for it in the AFDC category. Now, I am trying to figure out why you don't request more money for AFDC.

"A. You try to figure it out.

"Q. Well, can you?

"A. I have no comment.

"Q. You don't?

"A. No, I have no comment to make on it."

Hackney Deposition, pp. 37-38.

[61] We put to one side our strong doubt that Texas, faced with a choice of appropriating more funds for needed welfare purposes, or reducing the favored, primarily white old age category (with that category's strong political influence), would actually reduce the old age category. Here, for purposes of analysis we assume reduction rather than a larger appropriation. The issue here is whether it is reasonable, as suggested by appellees, to require the needy children to be the sole bearers of the burden caused by rising children's rolls and, therefore, the group which absorbs the full impact of any reduction.

The issue posed here is also one of those faced by this Court in *Shapiro v. Thompson, supra.* There the appellants argued that the removal of the discrimination against new residents would cause a sharp increase in welfare expenditures, that such money might not be available, and *that the long-term residents would suffer reduced grants.* By permitting the classification, appellants argued, "[S]tate programs. . .will not be impaired by a substantial influx of resident newcomers." 394 U.S. at 628. The Court in *Shapiro,* however, rejected the "implicit" distinction that the newcomers who apply for welfare benefits "are somehow less deserving" than long-term indigent residents. 394 U.S. at 631-32.[62] *Shapiro* makes clear that a state cannot justify a discrimination against one group, while favoring another similarly situated group, on the ground that giving equal treatment to the first group will leave less money available for the second group or cause greater welfare expenditures than it is prepared to meet. *There must be a separate ground for distinction between the two groups.* Appellees have shown none.

The distinctions created between needy mothers and children, on the one hand, and elderly people on the other, *are particularly invidious in light of a major reason why the numbers of mothers and children are increasing on the rolls.* In short, the AFDC rolls in Texas have been rising because this Court in *King v. Smith, supra,* found that the

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[62] The Court added:

> "We recognize that a State has valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot be an independent ground for an invidious classification." 394 U.S. at 633.

type of AFDC rules used by appellees had *illegally* excluded needy children from assistance. Memorandum E-417 (90).[63]

Having illegally excluded thousands of children in the past, Texas now argues that those and other children presently on the rolls are the very ones who should carry the burden produced by judicial reversal of Texas' illegal policies. Here indeed is a novel theory of equal protection. It is tantamount to saying that if Texas had conspired to keep more Negroes off the public assistance rolls but was prevented from continuing to do so by judicial decision, the Negroes thereafter admitted to the rolls (as well as the Negroes earlier on the rolls) should receive lower grants than anyone else since they are the ones causing the rolls and costs to rise.

Suppose, for a moment, that Texas had *not* illegally kept thousands of needy children off the welfare rolls, and that Texas—from the beginning—had legally and fairly administered its AFDC program. In that case, Texas would not be able to use the "rising AFDC rolls" argument. Surely Texas cannot now be more free to discriminate against needy children than it would have had it acted in keeping with the Social Security Act and the Constitution in the first place. Appellants do not here argue that the Equal Protection Clause requires Texas to appropriate more money for AFDC. We contend only that similarly situated needy people must be treated equally, and that judicial reversal of illegal exclusionary policies cannot be turned into a constitutionally

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[63] As admitted by appellee Hackney, the reductions were necessary because

> "The AFDC rolls in Texas have been increasing over the last number of months at a level of about 3,000 children per month. The Department has been able to handle this increase within the appropriated amounts, but it is anticipated that the rolls will further increase another 15 to 25% as a direct result of the Supreme Court ruling on the 'man-in-the home' policy" (90).

permissible justification for further discrimination against the very needy persons who were the victims of those illegal policies.

(e) *The district court's major justification—each program has a purpose in addition to meeting financial need, and those purposes justify differences in grants levels:* The court below acknowledged that all four programs have a common purpose of relieving need of the indigent persons covered, that they all share a wide number of administrative regulations, that they all arise under the same Social Security Act and Texas Public Welfare Act. Indeed, the appellees, as noted earlier, apply but *one* standard in determining the minimum subsistence needs of all recipients whether they are AFDC, OAA, APTD, or AB. In no way does the court below dispute the proposition that the need of the indigent in any one category is the same as the need in the other ("need" is defined for each recipient prior to a reduction in amount of grant based on his "category"). Stipulation No. 63 (81).[64] However, the court below argues that each of the programs has an additional purpose besides that of relieving need. The court noted that "[i]n the non-AFDC programs, the emphasis is primarily on the creation and the retention of the ability for self-care. . . AFDC, on the other hand, is designed primarily to maintain and strengthen family life." 304 F. Supp. at 1336. The court relied on these "additional purposes" to

> "justify in large measure the difference in financial assistance accorded recipients in the various welfare programs. Under this view, the difference in grants between programs merely reflects the fact that disparate purposes call for dissimilar solutions." *Ibid.*

The court reached this result by reasoning that "[s]elf-help for the aged, blind and disabled may indeed pose a more

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[64] See generally section A, *supra*, for a discussion of the identity of purposes in the various welfare programs—to meet need, and combat dependency.

pressing social problem than strengthening family life among recipients of AFDC. This question is for the legislature." 304 F. Supp. at 1337.

The district court misunderstood these non-financial public assistance "purposes". As noted in section A, *supra*, these additional purposes are *all* rehabilitative in nature and *all* are designed to reduce the dependency of the recipient. See *King v. Smith, supra*, 392 U.S. at 325, n. 22. Thus the additional purposes were added to each title at the same time (1956) by the same public law, and with the same goal in mind. See P.L. 84-880, § 300, 84th Cong., 2d Sess. (1956). In each program Congress implemented the rehabilitation purpose in the same way. Thus each public assistance plan had to include a description of those *social services* which it would provide to accomplish the rehabilitation effort Congress sought to encourage. See 42 U.S.C. § § 302(a)(10)(C), 602(a)(13), 1202(a)(13), and 1352(a)(12).[65] Congress made clear that the accomplishment of the new statutory objective was dependent not on the financial assistance aspect of the program, but on these newly-financed social services. See S.Rep. No. 2133 on H.R. 7725, 84th Cong., 2d Sess. (1956), 1956 *U.S. Code Cong. and Admin. News*, pp. 3938-39.[66] Texas statutes and regulations mirror

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[65] Indeed, in 1962 the provision of certain social services was made *mandatory* in AFDC, and increased federal matching funds were made available for the mandatory services. 45 U.S.C. § 602(a)(14), (15); 603 (a)(3)(A). Increased matching is available for OAA, AB and APTD as well if the state voluntarily agrees to provide certain minimum services as prescribed by HEW. 45 C.F.R. § 222.20 *et seq.*

[66] Thus, the Senate Report explains that "the bill would amend section 401 [AFDC] . . . to make it clear that the purpose of title IV of the act includes not only financial assistance, but also services to maintain and strengthen family life and to help the relatives caring for dependent children attain that degree of self-support and personal independence consistent with maintaining parental care and protection." Id. at 3938. The *services* are specifically noted as designed to "achieve the purposes of" the rehabilitation amendments. *Ibid.* Similar language appears with respect to the other titles.

the federal program in terms of the 1956 Social Security Act amendments. Thus Art. 695c, § 4(12) authorizes the provision of social services in *all* programs, services which are all "designed to help families *and* individuals attain or retain capability for independence and self-care." Appellees' own regulations recognize the common purposes accomplished by the provision of social services. See, *e.g.*, Financial Services Handbook §§ 3100, 3150, 3152. We do not doubt that the particular social services required may vary depending on the source of dependency (age, blindness, death of a spouse), but that does not negate the identity of *general purpose*.

Further, the lower court was wrong to find that even the particulars of these broad purposes differ. Thus, in AFDC, the reaching of "maximum self-support and personal independence" by the caretaker relative is stated as a primary purpose. 42 U.S.C. § 601. In OAA, "capability for self-care" is important. 42 U.S.C. § 301. In AB and APTD the wording is "capability for self-support or self-care". 42 U.S.C. §§ 1201, 1351. It is inconceivable that these minor differences in wording can provide the rational nexus between paying 50% of AFDC needs and 95 to 100% of "adult" needs. If the *only* difference in legislative purposes is that in AFDC there is an *additional* purpose, namely the strengthening of family life, the appellees can hardly suggest that they are furthering this additional purpose by the provision of less than full subsistence needs. Obviously when grants are below defined subsistence levels the additional service function of the Act will be frustrated. Thus in discussing the 1962 social services amendments, the Court in *King v. Smith*, 392 U.S. at 325, n. 22, noted that

> "President Kennedy, in his 1962 welfare message to Congress, observed that the communities that had attempted to cut down welfare expenditures through arbitrary cutbacks had met with little success, but that 'communities which have tried the rehabilitative road—the road I have recommended today—have demonstrated what can be done with creative pro-

grams of prevention and social rehabilitation.' See Hearings on S. 10606 before the Senate Committee on Finance, 87th Cong., 2d Sess. 109 (1962)."

Cutbacks in financial assistance were in the eyes of the draftsmen of the 1962 amendments the very road to be avoided—surely cutbacks directed solely at AFDC recipients cannot be supportive of the service provisions of the Act.

Finally, the district court was satisfied when it found what it viewed as different purposes in the various programs. *The court never inquired into whether or not the classification being challenged could in any way be justified by the alleged difference in purposes.* If this case were challenging Texas' failure to offer marriage counseling services to aged welfare recipients while it provided such services to AFDC mothers, we would understand the relevance of the alleged differences in purpose between the programs. But Texas may not arbitrarily set welfare payments at 50% of need in AFDC based on a non-financial variation in purpose. If the district court were correct that the Texas legislature might believe that services for adults are a more pressing social problem than rehabilitative services for children, then the legislature should provide a greater variety of services to adults than it does for AFDC families—it should not starve the children in the process.

D. The Discriminatory Impact of the Percentage Reduction Violates Title VI of the Civil Rights Act of 1964.

Title VI provides:

> "No person in the United States shall, on the ground of race, color, or national origin, . . . be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d."

There is no doubt that the programs of categorical assistance under the Social Security Act are "Federal financial assistance" subject to Title VI, and that a Black or Mexican-

American recipient under any such program may challenge discriminating state actions committed under the program. See *e.g., Ward v. Winstead, supra.* For the most part, of course, Title VI merely reiterates the obligations imposed by the Fourteenth Amendment, and appellants' constitutional argument is fully applicable to Title VI as well. But specific strictures of Title VI also strengthen and reenforce the points already made by appellants. Through Title VI, Congress has expressed its special concern for policing discriminatory state action which is Federally supported. When such Federal support comes into play the courts need not rely solely on the generalized constitutional antagonism to racial classifications but also must consider a specific Federal policy against implicating the Federal government in anything which smacks of discrimination.

There has been no litigation under Title VI itself which casts any significant light on the standards to be applied in this case. The several challenges to AFDC discriminations in other states, *Lampton v. Bonin, supra; Ward v. Winstead, supra,* also raised Title VI claims, but the failure to prove adequate racial disparities in those cases distinguishes them from the present case. A companion section to Title VI, Title VII of the same 1964 Civil Rights Act, has, however, produced an instructive precedent. The first major Title VII decision in the Supreme Court, *Griggs v. Duke Power Co., supra* posed a situation almost precisely analogous to that at bar. As discussed above, in *Griggs* the employer adopted a policy of denying promotions to persons who did not have a high school diploma and could not pass a battery of tests. There was no allegation that this policy was racially motivated or that it applied only to Blacks. Indeed, the record in the case shows that many Whites as well as Blacks were excluded from promotion by it. However, as is the case with Texas' welfare cutbacks, the burden of the policy fell disproportionately on Blacks because they were

less likely to meet the standards.[67] This was enough to invoke the protection of the Civil Rights Act of 1964. This Court observed in *Griggs* that:

> "The Act proscribes not only overt discrimination, but also practices that are fair in form but discriminatory in operation." 401 U.S. at 431.
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> "The Court of Appeals held that the Company had adopted the diploma and test requirements without any 'intention to discriminate against Negro employees.' We do not suggest that either the district court or the Court of Appeals erred in examining the employer's intent; *but good intent or absence of discriminating intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups . . .*" 401 U.S. at 432.

The Court went on to caution that a test would be sustained only if it was justified by business necessity, but that the employer has the burden of proving that necessity. See, *e.g. Gregory v. Litton Systems, Inc.*, 316 F. Supp. 401 (D. Cal. 1970) (denying employer right to exclude persons with arrest records); *Johnson v. Pike*, 3 FEP Cases 1025 (C.D. Calif. 9/29/71) (denying employer right to discharge employees whose wages were garnished).

It would seem logical that the *Griggs* rational should apply to Title VI as well as Title VII. *Cf. Chance v. Board of Examiners, supra.* HEW regulations implementing Title VI for that agency read much like this Court's decision in *Griggs.* In general, the regulations forbid grantees (*e.g.*, Texas) from directly, or through agreement with others, differentiating in the level of services, or financial assistance

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[67] The racial differentials in *Griggs*, at least as to the high school diploma requirement, were less significant than in the case before this court. The Supreme Court in *Griggs* thought it sufficient for purposes of finding discrimination that 34% of Whites had high school diplomas and only 12% of Blacks. See 401 U.S. at 430, n. 6.

made available under the grant to any individual on ground of race, color or national origin. 45 C.F.R. § 80.3. Moreover, grantees of federal funds may not take action which has the *effect* of such discrimination. 45 C.F.R. § 80.3(b)(2).[68] HEW has specifically warned that a grantee "may not take action that is calculated to bring about indirectly what this Act forbids it to accomplish directly." 45 C.F.R. § 80.65(h). It should be clear that the *Griggs* principle applies to Title VI (and the Fourteenth Amendment) as well as Title VII. The Texas welfare cutbacks which are clearly "discriminatory in operation" must be enjoined unless justified by some legislative necessity. As demonstrated earlier, no such necessity exists for the peculiar categorical selection which Texas has made.

POINT II

TEXAS' FAILURE TO USE THE ADJUSTED STANDARD OF NEED IN ITS AFDC PROGRAM TO DETERMINE ELIGIBILITY FOR AFDC PAYMENTS AND CONCOMITANT SERVICES VIOLATES SECTION 402(a)(23) OF THE SOCIAL SECURITY ACT

While this is the second time the Court has been asked to consider § 402(a)(23) of the Social Security Act, 42 U.S.C. § 602(a)(23), appellants' basic position is that the statutory issue presented in this case under that section was in fact

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[68] "A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the *effect* of subjecting individuals to discrimination because of their race, color, or national origin, or have the *effect* of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin."

already decided by the Court in *Rosado v. Wyman, supra.* Unless the decision below is reversed, and the *Rosado* decision adhered to, the Court will leave § 402(a)(23) with virtually no practical effect, contrary to the usual canons of statutory construction, see *Rosado v. Wyman, supra,* 397 U.S. at 415; *Uptagrafft v. United States,* 315 F.2d 200 (4th Cir.), *cert. denied* 375 U.S. 818 (1963); *General Motors Acceptance Corp. v. Whisnant,* 387 F.2d 774 (5th Cir. 1968), as well as the scheme of the federal AFDC legislation. An examination of the *Rosado* decision, the relationship between the standard of need and welfare eligibility, both as a matter of social work and of welfare law, the historical backdrop to HEW's position with respect to this question, and the structure of the federal categorical assistance programs will conclusively demonstrate the invalidity of the Texas budgetary method.

A. Rosado v. Wyman

On July 1, 1969, the State of New York eliminated from its AFDC standard of assistance those items which it had previously recognized as "special needs," *i.e.* available to recipients when need was demonstrated in the particular case according to defined criteria established by the state welfare agency. The result was to drastically reduce welfare payments to a substantial number of AFDC recipients in the state and, in the process, reduce New York's welfare budget by approximately $40,000,000. The district court enjoined the elimination of these items, holding that the dual mandate of § 402(a)(23), namely that the "amounts used . . . to determine the needs of individuals" be adjusted to reflect cost-of-living changes since those amounts were last established, and that "any maximums" on the aid paid be proportionately adjusted, clearly required an upwards adjustment to all AFDC *payments;* a reduction of payments as New York had accomplished was *a fortiori* proscribed. *Rosado v. Wyman,* 304 F. Supp. 1356 (E.D.N.Y.1969).

Petitioners before this Court in *Rosado* argued the same theory of § 402(a)(23) relied upon by the district court (and by the three-judge court in this case), namely that § 402(a)(23) required states to raise AFDC payments to reflect cost-of-living increases. This Court squarely rejected their position, and construed § 402(a)(23) literally to require only that the standard of need be adjusted, and that any dollar maximums on the amount of aid paid be similarly adjusted. 397 U.S. at 412. New York's violation of § 402(a)(23) was not in its reduction in payments *per se*, but in its reduction of the standard of need by the elimination of items therefrom, since such an elimination amounted to a "circumnavigation" of the cost-of-living adjustment. 397 U.S. at 415. The Court declared that:

> "Consistent with this interpretation of § 402(a)(23), a State may, after recomputing its standard of need, pare down payments to accomodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the actual standard of need." 397 U.S. at 413.

The Court found, however, that its more limited interpretation of § 402(a)(23) did not, contrary to the suggestion of petitioners in *Rosado*, thereby render the section meaningless. It found that "the cost-of-living exercise. . . has both practical and political consequences." 397 U.S. at 413. These consequences are discussed below. Appellants here maintain that Texas' method of determining eligibility for, and the amount of, AFDC payments negates each of those consequences; this Court need only agree with us on any one for the judgment to be reversed.

1. *Increased Eligibility*

Perhaps the most important of the consequences of § 402(a)(23) discerned by this Court is that

> "It has the effect of requiring the States to recognize and accept the responsibility for those additional

> individuals whose income falls short of the standard of need as computed in light of economic realities and to place them amongst those eligible for the care and training provisions." 397 U.S. at 413.

Such an effect to § 402(a)(23) is attributable to the function of the standard of need as the determining factor of AFDC eligibility, and to the Court's assumption that all families "in need" under the state's need standard are eligible for cash assistance.

As the Court noted in *Rosado*, the standard of need is the "yardstick for measuring who is eligible for public assistance," 397 U.S. at 408, and thus an updating of the standard should render eligible for aid those families whose income is lower than the adjusted standard, but who were theretofore ineligible since their income exceeded the standard as it existed prior to the adjustment. New York's reduction of the content of its standard of need was illegal since it "avoid[ed] the consequences of increasing the numbers eligible and facing up to the failure to allocate sufficient funds to provide for them." *Rosado*, 397 U.S. at 415. Texas' violation is identical. By using only a fraction of its standard of need to determine eligibility for AFDC payments (50% at the time of the original district court decision), Texas has avoided its obligation to place on the assistance rolls those marginal families who are presently needy under Texas' standard of need but who were ineligible under the standard of need in effect prior to the 11% cost-of-living adjustment in May 1969. As the district court found, rather than increase eligibility, Texas eliminated almost 2500 families from the AFDC program with the adoption of the new budgetary method (including plaintiff Davila), 304 F. Supp. at 1343, while benefits for over 20,000 families were reduced. *Ibid.*[69] The net effect is that many admittedly

[69] These figures, appearing in the district court's initial decision in this case, are based on the use of a 50% reduction factor. The principle is the same, however, whatever percentage is used since all those families with income below the adjusted standard of need but above the "reduced" standard will be illegally kept off the rolls. As long

needy families, including families heretofore receiving assistance, are deprived of not only a small money payment, but are also precluded from a variety of social services, employment training, work incentives, and medical assistance under Title XIX of the Social Security Act, all of which are keyed to the receipt of financial assistance. See section C, *infra*.

The Solicitor General, in his *amicus* brief filed prior to the noting of probable jurisdiction in this case,[70] admits that if the language quoted above from *Rosado* regarding the eligibility of additional individuals due to the cost-of-living adjustment "is a binding construction of the Act, appellants are entitled to prevail," since "Texas has avoided the stated effect for a limited class of its needy residents." *Amicus*, p. 5.[71] The *amicus* contends, however, that the question of the relationship between AFDC eligibility and the § 402(a)(23) cost-of-living adjustment to the standard of need was not before this Court in *Rosado*. *Ibid.* Appellants believe that this position is a disingenuous one, and represents the federal agency's effort to avoid the consequences of its own position before this Court in *Rosado*. More importantly, a careful reading of the *Rosado* decision makes clear that the "practical effect" of increased eligi-

as the "reduced" standard is less than the previous eligibility level, as adjusted to account for the increase in living costs, § 402(a)(23) is "circumnavigated." In Texas, the present 100% standard of need is the "amounts used to determine need" which was adjusted pursuant to § 402(a)(23). Thus any eligibility level below the 100% standard violates § 402(a)(23).

[70] References to the Solictor General's *amicus* brief will be cited here as *Amicus*, p.____.

[71] As noted above, at the time of the original decision of the district court, 2500 families were stricken from the AFDC rolls as a result of the new budgetary method. As of May 1969, there were 36,400 AFDC families in Texas. NCSS Report AFDC-3(69), U.S. Department of Health, Education and Welfare, December 1970. Thus, even if *no* additional eligibles would have been added to the rolls by virtue of Texas' 11% cost-of-living increase to its standard, the eligibility of about 7% of the caseload was affected. Of course, it is inconceivable that *no* additional families would have been rendered eligible.

bility was fundamental to the Court's decision. Indeed, in noting the practical and political consequences it found in § 402(a)(23), *including the eligibility consequences*, the Court specifically recognized that its conclusions with respect to the effects of § 402(a)(23) were necessary to give the section "some meaning," 397 U.S. at 413, so as to avoid rendering the statute "a meaningless exercise in 'bookkeeping.'" 397 U.S. at 413.

The Solicitor General argues that since New York purported to pay 100% of need "in *Rosado* . . . there was no question whether [a cutback in AFDC payments] could be made in a way that denied benefits to individuals who received income in an amount less than the state standard of need." *Amicus*, p. 6. While the propriety of the Texas-type budgetary method concededly was not directly framed by the parties to *Rosado* as a "question presented," appellants maintain that it was *squarely* before the Court, and decided after specific consideration of the question raised in this case. Petitioners in *Rosado* explained in their brief, *using Texas as an example*, that states were subtracting income from a reduced standard in determining eligibility after the updating, rather than from the standard of need. See Petitioner's Brief, *Rosado v. Wyman*, No. 540, O.T. 1969, p. 68. They argued that if payments did not have to be increased under § 402(a)(23) and such a procedure could be followed, no practical effect could be found in § 402(a)(23) in such a state since along with reduced payments, reduced eligibility would follow the cost-of-living adjustment.[72] The Court rejected the *Rosado* petitioner's contention that this demonstrated the invalidity of payment reductions and found, instead, that states could not implement a percentage reduction in such a manner. Thus, in opting for increased eligibility as a practical consequence of

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[72] This argument was also pressed before this Court in the jurisdictional statement filed in *Lampton v. Bonin*, No. 1112 Misc., O.T. 1969. See the discussion of *Lampton, infra*.

the statute, the Court specifically defined "ratable reduction" as follows:

> "A 'ratable reduction' represents a fixed percentage of the standard of need that will be paid to all recipients. In the event that there is some income *which is first deducted*, the ratable reduction is applied to the amount by which the individual or family income falls short of need." 397 U.S. at 409 n. 13 (emphasis added).

Rosado thus clearly recognizes that any reduction must be applied to the needs determination (full need standard less available income). Only if such a procedure were followed would there be any guarantee that the adjustment of the need standard would render additional persons eligible, thus giving content to § 402 (a)(23).

Further evidence that this Court in *Rosado* did not reach its conclusion unwittingly as to the effect intended by § 402 (a)(23) on AFDC eligibility, and the Texas budgetary approach, is the simultaneous pendency before the Court of the appeal in *Lampton v. Bonin*, 304 F. Supp. 1384 (E.D. La. 1969), *vacated and remanded for reconsideration in light of Rosado*. 397 U.S. 663 (1970). The three-judge court in *Lampton*, which construed § 402 (a)(23) as not mandating an increase in AFDC payments, emphasized the function of the full need standard as the determining factor in eligibility for payments and services, and consequently found significant effects for that section even if increased payments were not mandated. Judge Wisdom rejected the premise behind the increased payment argument since it failed to take into consideration that § 402 (a)(23) is not "meaningless" since

> *"One of the effects of Section 402 (a)(23) as interpreted by HEW*[73] *and defendants is to make additional*

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[73] In a brief submitted by the Secretary of Health, Education and Welfare as *amicus curiae* in *Lampton*, HEW advised the court (at page 22) that its interpretation of § 402(a)(23) (permitting a reduction in payments) would not "nullify" that section, but would leave it with "some significant effects":

> *persons eligible for AFDC payments as well as for concomitant services* provided not only for the child but also for his parents and family members. An examination of the many lengthy provisions added to Section 402 by the 1967 Social Security Amendments shows that Congress's major concern was the provision of family counseling and rehabilitation services, work incentives, and family planning programs to reduce out-of-wedlock births, for all persons in the family, in order to promote self-support and child development and to strengthen family life. See U.S. Code, Cong. & Admin. News, Vol. 2, 90th Cong., 1st Sess. (1967), p. 2837. *By making those with marginal incomes eligible for AFDC by raising the standard of need, more persons would be eligible for such services* which Congress considered vital to cut down in the long run the numbers dependent on welfare." *Lampton v. Bonin*, 304 F. Supp. at 1389 (emphasis added).[74]

The majority in *Lampton* reached its conclusion despite the dissenting judge's observation that HEW's position in *Lampton, i.e.* that financial eligibility would be increased if the standard of need were adjusted, was not taken by the federal agency in Texas (in this case) since Texas "applied its ratable reduction to the standard of need, rather than the budgetary deficit," 304 F. Supp. at 1392, and in the process had reduced AFDC eligibility. Judge Cassibry assumed in light of HEW's position regarding the

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> "If the need standard is raised to reflect higher living costs, additional individuals become eligible for ADC. In our example, if the need standard goes from $100 to $120, more individuals with income will now be eligible. They will receive small assistance payments and also medical care (under the State's title XIX plan in most States) and a variety of social and rehabilitative services."

The HEW *Lampton amicus* was reprinted by Petitioners in *Rosado* as an appendix to their brief on the merits.

[74] The *Lampton* opinion thus parallels in reasoning the subsequent decision of this Court in *Rosado*. It is not unreasonable to conclude that this Court may well have been persuaded by the opinion of Judge Wisdom. Surely it was aware of it.

acceptability of Texas' method, that a state could *reduce* eligibility consistent with § 402(a)(23). He thus concluded that such an interpretation would leave the section with no meaning, and so dissented. The *Lampton* majority's reliance on the effect of § 402(a)(23) on AFDC eligibility in the face of explicit recognition of the Texas method, by the dissent coupled with the fact that the *Lampton* decision was well-known to this Court, further supports appellants' view that the propriety of using a percentage reduced standard to determine eligibility was rejected in *Rosado*.

HEW's position in *Lampton* was maintained before this Court in its *amicus* in *Rosado*. The Solicitor General told this Court that

> "recalculation of need may serve to render eligible for benefits families which may appear under unadjusted standards marginally to have attained self-sufficiency, but which in fact are unable to subsist at the present cost-of-living. Families thus eligible would receive at least a small money payment, and would also be eligible for medical assistance and social and rehabilitative services." Memorandum of the United States as Amicus Curiae, *Rosado v. Wyman*, No. 540, O.T. 1969, p. 8.[75]

It is rather incredible that the federal agency now repudiates its own "expertise" which was offered in support of its view of § 402 (a)(23) in 1969. In any case, it is clear from the above that the question of AFDC eligibility and the Texas budgetary method was indeed before this Court and decided in *Rosado*.

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[75] It is worth noting that in the two courts before which HEW did not make its "increased eligibility" argument, welfare recipients prevailed on their claim that an adjustment to payments was required. In the instant case, as noted above, HEW's *amicus* in the district court omitted any reference to this point, since in Texas 2500 families were struck from the AFDC rolls under Texas' proferred compliance. In *Rosado* in the district court, HEW did not file a brief.

Finally, one last point is worth mentioning. The Solicitor's contention that this Court did not mean to say what it did with respect to AFDC eligibility in *Rosado* is rather difficult to accept in light of the repeated references to this point in its opinion. See 397 U.S. at 408, 409, 413, 415, 421. We might realistically expect that the Court would not have been so preoccupied with financial eligibility had it not considered the question to be essential to the resolution of the issue presented in *Rosado*.[76]

In sum, the Government's argument that the increased eligibility effect of § 402(a)(23) was not before the Court in *Rosado* is patently incorrect, and misses the point of that decision. To be sure, the precise question before the Court was not "how may ratable reductions be applied?"[77] However, as we have shown, the Court had to determine the purpose and effect of § 402(a)(23) in order to decide whether New York's program was satisfactory. The Court held that § 402(a)(23) required New York to "accept responsibility," 397 U.S. at 413, for those newly determined "needy" families, and thus § 402(a)(23) proscribed a reduction in the content of the need standard. Similarly, Texas may not

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[76] In a brief submitted to the district court in Washington, D.C., the United States Attorney urged that other language in *Rosado* (at 397 U.S. at 306, n. 8) should be accepted by that court as governing law. The Government noted that given this Court's extensive familiarity with the AFDC program, "the Court's remarks in *Rosado*, or in any case involving the AFDC program can hardly be dismissed as 'offhand comments.'" Brief for Defendants, *N.W.R.O. v. Finch*, No. 2954-69 (D.D.C.), p. 9, n. 2. Indeed, HEW has characterized *Rosado* as "a lucid and thoughtful discussion," HEW State Letter No. 1083, 5/25/70.

[77] Indeed, would the Government contend that this Court's acquiescence to reductions in payment was dictum and thus is open to reconsideration in this case, since New York still purported to pay 100% of need. After all, the district court in *Rosado* noted that the permissibility of *payment* reductions was "not formally before the Court," 304 F. Supp. at 1378, and HEW's *amicus* in *Rosado* (at page 10) also argued that that question was not before the Court. Of course, such a position would be absurd.

refuse to accept such responsibility by another device which equally "circumnavigates" the cost-of-living adjustment. Its noncompliance with § 402(a)(23) has resulted as much as New York's "in limiting the welfare rolls unduly." 397 U.S. at 421.

The only other court since *Rosado* to decide the question of whether or not the standard of need, as adjusted to take into account increases in the cost of living, is required under § 402(a)(23) to be used as the measure of financial eligibility, reached the same conclusion as do appellants herein. In *Alvarado v. Schmidt*, 317 F. Supp. 1027 (W.D. Wisc. 1970) (three-judge court), an omnibus attack on several different aspects of Wisconsin's program under § 402 (a)(23), plaintiffs challenged the validity of the budgetary method employed by Wisconsin in determining eligibility for and the amount of AFDC payments. Briefly, prior to November 1969, Wisconsin had applied a standard of need which consisted of various "allowances" (basic needs, shelter and special needs), and paid to eligible families 100% of determined need. The needs standard was updated as of November 1969.[78] At the same time the state established a new level of benefits which was determined not by reference to the standard of need but by application of four entirely separate allowances. This benefit level was significantly less than the standard of need. Eligibility for AFDC assistance and the computation of benefits was determined under the November 1969 plan by setting off any outside income against the benefit level, *not* the standard of need. The *Alvarado* court struck down this system, relying exclusively on *Rosado* and § 402(a)(23):

> "[I]t is clear that one of the functions of a standard of need is to serve as "a yardstick for measuring who is eligible for public assistance." *Rosado* at 408. Having this function, when the standard of need is adjusted to reflect cost-of-living changes, as

[78] Plaintiffs in *Alvarado* also challenged the sufficiency of the updating.

required by the federal statute, the adjustment has an impact on the determination of *eligibility*.

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The State has not used the revised standard of need to determine eligibility for AFDC recipients in Wisconsin. Instead of using the revised standard of need to determine eligibility, the state has used the payment level itself which the state calls the "basic allowance." Thus, instead of using the figure of $167 for a family of four, the state has used the figure of $126. It is important to note that this procedure for determining eligibility has real consequences for poor people in Wisconsin. By using a lower standard to determine eligibility, the state has undoubtedly denied access to the AFDC program to many persons who would be eligible were the correct, revised standard utilized. The court in *Rosado* found that § 402(a)(23) was more than merely a "meaningless exercise in bookkeeping." If states were permitted to revise their standard of need and then simply not use it, § 402(a)(23) would indeed be rendered a futile gesture on the part of Congress. Accordingly, *we find that in not using its revised standard of need to determine eligibility for the AFDC program in Wisconsin, the state has violated the federal statute.* 317 F. Supp. at 1037-38 (emphasis added).

As did Wisconsin, Texas is using a standard to determine AFDC eligibility which is lower than its revised standard of need and in so doing has rendered § 402(a)(23) a "futile gesture." Appellants urge that the logic of the *Alvarado* decision is compelling, and is indistinguishable from the violations of federal law being perpetrated by Texas.[79]

[79] There is no distinction for purposes of this case between use of a percentage reduced standard to determine eligibility for AFDC (Texas) and the use of some other figure which is lower than the 100% standard for the same purpose. The illegality under § 402(a)(23) results from using a financial eligibility standard which is less than the amount which is derived by applying the proper cost-of-living factor to the standard of need in effect when § 402(a)(23) was enacted. In such a case, the increased eligibility function of the section is avoided, however the state may derive the lower level.

2. *Other Consequences of § 402(a)(23)*

The other "practical consequence" of § 402(a)(23) according to the Court is the incentive provided by that section for states which use them to abandon dollar maximums. The Court noted that

> "[B]y imposing on those States that desire to maintain 'maximums' the requirement of an appropriate adjustment, Congress has introduced an incentive to abandon a flat 'maximum' system, thereby encouraging those States desirous of containing their welfare budget to shift to a percentage system which will more equitably apportion those funds in fact allocated for welfare and also more accurately reflect the real measure of public assistance being given." *Rosado*, 397 U.S. at 413-14.

If the Texas eligibility determination procedure is lawful, however, no such incentive is in fact provided by § 402(a)(23).

The only "incentive" to abandon maximums inheres in the effect of the cost-of-living adjustment to such maximums on state budgets—assuming no change in the character of the AFDC population, total expenditures would have to be increased by approximately the amount of the increase to the retained maximums. However, if a reduced standard may be used to determine eligibility for assistance, this "incentive" is illusory. In order to maintain maximums without incurring greater expenditures, a state would merely have to begin using the maximum to determine AFDC eligibility rather than the standard of need. The result of such an approach would be to *reduce* the number of persons eligible for assistance, and to reduce the grants for all persons with some income, and in the process effect a possible *savings* in total state expenditures. If a state with dollar maximums adopted such a system of grant computation, it would "circumnavigate" the second effect of § 402(a)(23) since it would successfully avoid the incentive to abandon maximums

intended by Congress.[80] Indeed, this is precisely the situation in California, where an adjustment of the maximum grants by over 20% did not provide an incentive to switch to a percent reduction system since by using the maximum for the first time to determine eligibility California's costs were not increased.[81]

Finally, Texas' application of its percentage control factor to the standard of need prior to the consideration of income minimizes the last intended effect of § 402(a)(23), the "political" consequences.[82] When a state discloses that *it* is meeting only 50% of need it implies to the general public that all families will receive at least that percentage of their need *from the state* in the form of welfare payments. Texas, on the other hand, deprives many admittedly "needy" families of any assistance whatsoever from the state to aid them toward the goal of an adequate standard of living (as defined by the standard of need), and provides many others

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[80] That Texas abolished its maximums when it established the new budgeting procedure does not negate the force of our argument, since if HEW is right, Texas could as easily have chosen not to do so, and so § 402(a)(23) would not be a club at all. Moreover, Texas eliminated its maximums under threat of a court order. It acted after a three-judge court had been convened in *Robinson v. Hackney*, No. 68-H-294, S.D. Tex., a constitutional challenge to the maximum grant, and the three-judge court in *Williams v. Dandridge*, 297 F. Supp. 450 (D. Md. 1969) had ruled such maximums were unconstitutional. See also Sarazan dep., pp. 37-38, where appellee Sarazan recognized "practical necessities" created by the numerous lower court decisions on maximum grants; and Department of Public Welfare, Annual Report, 1969, p. 4. See *supra*, point I, at pp. 54, 68, 69.

[81] Analysis of Senate Bill No. 796, as amended, 1971 Session, California Legislative Analyst, Aug. 9, 1971.

[82] "While it leaves the state free to effect downward adjustments in the level of benefits paid, it accomplishes within that framework the goal, however modest, of forcing a State to accept the political consequences of such a cutback and bringing to light the true extent to which actual assistance falls short of the minimum acceptable." *Rosado*, 397 U.S. at 413.

with less than the 50% allegedly paid.[83] The "political consequences" of § 402(a)(23) contemplated by this Court in *Rosado* were those resulting from an accurate public acknowledgement of the percent of benefits which would be paid by the state to relieve unmet needs, *i.e.* the extent of the state's willingness to commit its resources to aid those it finds in need. These consequences are undercut if the state can maintain the appearance of meeting 50% of need when it has in fact established a new lower "standard" which merely redefines the level of living it will aid needy persons to attain, completely denies aid to any families above that "standard" and pays less than 50% of need to many others.[84] One might assume that Texas has gained political mileage from masking the fact that many families which have not reached a barely minimal standard of living are deprived of all welfare *and* medical assistance (which they cannot possibly afford since their income is not sufficient even for basic needs such as food and shelter.)[85] Indeed, Texas has obscured the true facts by calling the 50% level "recognizable needs" (101) purporting to embody a judgment that an AFDC family needs no more, and that the full standard is gravy.

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[83] Thus, assume the standard of need for a family of four is $200 per month. A family with no income will receive from the state under a 50% system $100. If that family has $50 outside income, it will receive from the state $50, or 25% of its determined need, and if the family has $100 income it will recieve no grant from Texas despite an admitted need of $50.

[84] Thus *Rosado* held that if Texas could not afford to increase AFDC payments under its adjusted standard it may "pare down payments" by "reducing the percent of *benefits paid*," 397 U.S. at 413. (Emphasis added.) It could not lower the standard itself.

[85] We should not lose sight of the fact that the 100% standard is by definition merely the amount deemed necessary by the state "to assure economic security." HEW Handbook, Pt. IV § 3120.

[86] Footnote 86 has been deleted.

B. HEW's Approval of the Texas Method was Inconsistent with Both the Legislative History of Section 402 (a)(23) and with Administrative Practice in Defining the AFDC Financial Eligibility Level as the Standard of Need.

Faced with a construction of § 402(a)(23) which it for some reason cannot tolerate (despite being the prime advocates of that view of the section before this Court), the Government finds support for its position in the fact that in addition to the Texas plan, it has approved eighteen other state plans which are similar to Texas' (a somewhat circular "bootstraps" argument). The *amicus* draws the inference that since an alleged "diversity of methods" existed when § 402(a)(23) was enacted, and since Congress evidenced no specific intention to end this diversity, it must be assumed to have approved it. *Amicus*, p. 8. Appellants believe that the agency's view of the legislative history is foreclosed by this Court's interpretation of the statute and its legislative antecedents in *Rosado*; that it is in any case completely unsupportable; and that its present position can be best explained as an after-the-fact rationalization of its approval of the Texas method—a rationalization offered despite clearly inconsistent prior pronouncements by the agency regarding the purpose of the standard of need and the proper methods of reducing payments in the public assistance programs. In sum, we shall demonstrate that HEW's view of the Texas AFDC plan represents an attempt to repeal § 402(a)(23).

1. *Legislative History of § 402(a)(23)*

Initially, it is well to remember that this Court's interpretation of § 402(a)(23) upon which we rely, *supra*, followed a review of the legislative history which resulted in little help for the Court. The Court characterized the section as "a child born of the silent union of legislative compromise," *Rosado*, 397 U.S. at 412, and considered as its "chief resources" the words of the statute and the "common assumptions" which must necessarily be made in the absence

of clear Congressional intent. *Ibid.* Thus, as the Government conceded in *Rosado*, "Congress could hardly have paid less attention" to § 402(a)(23). *Rosado amicus*, p. 3. Because of this lack of history the Government urged rejection of the district court's holding in *Rosado* that the section mandated an increase in AFDC payments. Yet it now seeks to rely on the absence of history to convince the Court that Congress legislated a radical departure from previous understanding of the function of the standard of need in determining public assistance eligibility. The agency wants it both ways.[87] What legislative history there is, however, indicates that appellants' interpretation of § 402(a)(23) is correct.

First, while HEW's latest tabulation shows 23 states using a percentage reduced standard for determining AFDC eligibility,[88] rather than the standard of need itself, when Congress was considering the 1967 amendments only four states used such a method. See NCSS Report D-3, September 1967, (Table 3); NCSS Report D-3, October 1968 (Table 3).[89] Thus, in light of the scanty attention to § 402(a)(23), it is unlikely that Congress would have been aware of this "diversity of methods" on its own. It is clear, however, that HEW never educated the Congress with respect to the budgetary

[87] As the Court noted in *Rosado*, "in view of Congress' failure to track the Administration proposals and its substitution without comment of the present compromise section, HEW's construction commands less than the usual deference that may be accorded an administrative interpretation based on its expertise." 397 U.S. at 415.

[88] HEW filed with its *amicus* brief in *Whitfield v. King*, No. 3330-N, M.D. Ala., a case similar to this one, an updated (9/71) version of the appendix to its *amicus* filed in this case last May.

[89] In the 1967 report, Colorado, Ohio, South Dakota and Virginia were listed under the heading "Payment plus other income represents specified percent of requirements." In the 1968 report, Colorado, South Dakota, Virginia, and West Virginia were so listed. Of course, while we must concede that these states were evidently using the Texas method in 1967, that alone is no indication of the validity of their approach.

methods in actual use. Indeed, everything placed before the Congress by HEW in 1967 indicated that the standard of need *always* determined eligibility for a money payment in AFDC.

The Under Secretary of HEW, for example, in testimony before the Senate Finance Committee, explained:

> "*Present law requires that eligibility to receive public assistance payments* be based on State estimates of the minimum amounts required for food, clothing, shelter, and other needs [i.e. the standard of need]." (Emphasis added.) Testimony of Wilbur Cohen, Hearings on H.R. 12080, Comm. on Finance, 90th Cong., 1st Sess., Pt. I, p. 255 (1967).

Moreover, in the supporting material provided Congress with respect to its original proposal that states be required to pay 100% of need (H.R. 5710), the Administration included figures showing AFDC cost standards[90] and the "highest monthly amount payable for basic needs" in the various states. Only three methods for determining the money payment were described:

(1) use of a dollar maximum on payments to recipients;

(2) application of a percentage reduction "to the amount of determined need" which is the need standard less income; and

(3) payment of 100% of the cost standard

Section-By-Section Analysis of H.R. 5710, Comm. on Ways and Means, Committee Print, 90th Cong., 1st Sess. (1967), p. 37. *None of the states meeting less than full need were identified by HEW as applying a percentage reduction to the standard itself.*

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[90]See *infra* at pp. 103-107 for a discussion of the significance of the "cost standard" as identified in this report to Congress, and HEW's present position regarding a "payment standard" (e.g. Texas' 50% level).

Finally, the interpretation of legislative history urged by the Government does not explain the elimination of the annual-updating requirement by the Conference Committee. The bill reported out of the Senate Finance Committee required an initial updating of AFDC standards by July 1, 1969, and an *annual* updating thereafter. S. Rep. No. 744, 90th Cong., 1st Sess., p. 293 (1967). The Conference Committee, obviously viewing the updating requirement as having practical significance, maintained the initial updating requirement but eliminated the provision for annual adjustments. Conf. Rep. No. 1030, 90th Cong., 1st Sess., 1967 U.S. Code Cong. and Adm. News 3179, 3208-09. If § 402(a)(23) is not read as requiring the updated standard of need to be used to determine AFDC eligibility, it is not clear at all why the annual updating should have been a significant bone of contention. Obviously the provision was understood to have teeth, for Congress rarely, if ever, legislates with *only* a subtle political motive in mind.

Given the total absence of support in the legislative history for the Government's position, and its prior descriptions of the standard of need's utility in describing AFDC eligibility before this Court, it will be useful to trace the agency's position chronologically, for a close reading of events will disclose the political as opposed to legal or legislative basis for its view.

2. *Prior HEW Pronouncements on the Function of the Standard of Need as the Determinant of AFDC Eligibility.*

It is worth emphasizing that this Court's description of the standard of need as the "yardstick" for determining eligibility for AFDC payments was not a departure from long standing practice and federal policy, but that, indeed, such a purpose was the very reason federal law required that a standard be created. As noted earlier, unless the standard were so used, HEW could not have told the Court, nor could the Court have found in *Rosado* that the

cost-of-living updating required by § 402(a)(23) was intended to increase the numbers of persons financially eligible for assistance.

From the very inception of the Social Security Act it was understood that categorical assistance, including AFDC, would only be given to those in need. The Act, as originally introduced in 1935, provided that the states must furnish sufficient assistance which, when combined with other income, would enable "reasonable subsistence" in health and decency.[91] That is states would be required to pay in full the amounts established in their need standards, and, of course, to aid everyone eligible under those standards. This provision was eliminated from the bill reported out of the House in deference to state's rights advocates and was not resurrected in the Senate or by the Conference Committee.[92] Hence came the power of the states to establish limits on the amount of aid which the state would be required to pay. However, the Social Security Board interpreted the Act as requiring state programs to take need into account in determining eligibility for assistance, and to provide such assistance according to determined need.[93] The authority for its position was § 401, 42 U.S.C. § 601, which stated as the Congressional purpose the provision of financial assis-

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[91] H.R. 4120, 74th Cong., 1st Sess. § 204 (1935). See the testimony of Dr. Witte the primary administration spokesman, in House Comm. on Ways and Means, Economic Security Act, Hearings on H.R. 4120, 74th Cong., 1st Sess. (1935) at 125-26, 262-63.

[92] Witte, *Development of the Social Security Act* (1962); DeForest, Rubin, Wynia, *Legislative History of the Aid to Families With Dependent Children Program*, Bur: Social Science Research (1970), p. 48. "'If 'adequacy' were set as high as the [federally] determined 'decency and health' standard would require, southern states would [have been] obliged to contribute to the removal of a central element of the 'way of life' in the Deep South, founded on Negro economic deprivation and political impotence."

[93] See, *e.g.*, House Committee on Appropriations, Hearings on Supplemental Appropriations Bill for 1936, 74th Cong., 2nd Sess., (1936), pp. 99-100.

tance to "needy" children. Under this interpretation, proposed state welfare plans under the Act were rejected which provided for grants to persons not "in need," see, e.g., Minutes of the Social Security Board, February 4, 1938,[94] or which provided for a flat amount payable to all persons meeting the need test without considering the particular need of the individual in light of his currently available income, see, e.g., Minutes of the Social Security Board, October 16, 1936. Individual need determined with reference to the state's standard of need was the federally-required keystone for determining the amount of aid payable.

In 1939, § 402(a)(7) was added to the Act as the recommendation of the federal agency, thus making this requirement even more specific. That section now provides that

> "except as may be otherwise provided [in (a) (8)] the State agency *shall, in determining need,* take into consideration any other income and resources of any child or relative claiming aid to families with dependent children. . ." 42 U.S.C. § 602 (a)(7).

The federal agency has interpreted the Act, so amended by § 402(a)(7), as an expression of Congressional will to provide "assistance payments. . .to *supplement* the income and resources of an individual when these are inadequate to provide him an opportunity to secure for himself the State's defined standard of economic security for people in need." HEW *Handbook of Public Assistance Administration,* Pt. IV, § 3120. HEW has made clear that one is "not required to be completely destitute in order to be eligible for assistance." *Ibid.* Thus, while Congress provided in the original legislation that the amount of aid could be limited, there is nothing in the Act, or HEW's early interpretation of the Act's purposes, which suggests that limitations on the aid paid may be applied in such a way as to prevent *any* sup-

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[94] These minutes were made available to counsel by the Office of the Commissioner, Social Security Administration.

plementation whatsoever for a class of admittedly needy families. On the contrary, HEW regulations and policies have consistently implemented § 402(a)(7) by requiring that all persons "in need" under the state test be provided *some* supplementary assistance. As we shall demonstrate, those regulations and policies accomplish this result by an *explicit* definition of the function of the standard of need as the financial eligibility standard for AFDC, and they compel the conclusion that Texas' use of a percentage reduced standard for this purpose is inconsistent therewith.

First, it is obvious that individual "need" could not be determined as required by § 402(a)(7) without a standard of need. As HEW has told this Court on two occasions, "[O]ne could hardly describe who are 'needy' individuals *for purposes of State eligibility* and Federal matching unless there were a standard of need." (Emphasis added.) Brief for the United States as Amicus Curiae, *Wyman v. Rothstein*, No. 896, O.T. 1969, p. 8; Memorandum for the United States as Amicus Curiae, *Wyman v. Boddie*, No. 1262, O.T. 1970, p. 4. HEW has long interpreted the statutory command that "other income" be considered in the determination of needs as follows:

> "The plan must provide that *all income and all resources* regularly available. . . will be evaluated and *taken into consideration, by comparing them with the State's standard of assistance to determine the amount of assistance needed. . .*" HEW *Handbook of Public Assistance Administration*, Pt. IV, § 3131.5 (emphasis added). See also *Id.* at § 3120.

Further, HEW has made explicit that this needs determination must be directly related to the computation of the amount of the assistance payment: "The plan must provide that the payment is based on the determination of the amount of assistance needed." *Id.* at § 3131.8. Lest there be any claim made by HEW that this language in its Handbook was not intended to be binding, we note that the 1969 codification of these HEW regulations in the federal register incorporates these requirements. Thus, state AFDC plans *must*

> "Specify a *statewide standard* . . . *to be used in determining* (a) the *need* of applicants and recipients *and* (b) the *amount of the assistance payment.*" 45 C.F.R. § 233.20(a)(2) (emphasis added).

Further, state plans *must* provide that

> "*in establishing financial eligibility* and the amount of the assistance payment: (a) All income . . . will be considered *in relation to the State's standard of assistance*. . ." 45 C.F.R. § 233.20(a)(3)(ii) (emphasis added).

Finally, AFDC payments *must* "be based on the determination of the amount of assistance needed." 45 C.F.R. § 233.20(a)(3)(viii). It is apparent, then, that the standard of assistance has long been intended to function as the sole determinant of financial eligibility for AFDC, and thus *Rosado* was clearly correct to so define it in the course of its search for meaning to § 402(a)(23).

Given the obvious fact which confronts appellants, namely that the Solicitor General has filed a brief in opposition to appellants' position on their § 402(a)(23) claim, it will be useful to demonstrate that HEW, in its literature distributed to State welfare agencies, and with only one exception[95] which will be discussed *infra*, has consistently interpreted its regulations as we do here.

Thus, in 1963 its Bureau of Family Services distributed to all state agencies and other interested groups via State Letter No. 678, a publication entitled "Yardstick for Need,"[96] intended to "describe the process of determining need." *Id.* at "forward." According to this booklet, "[d]etermination of 'need' . . . is . . . the basic . . . [factor] in establishing the eligibility of an applicant for assistance." *Ibid.* Further, "[a] single yardstick for measuring a person's need and for evaluating his income and resources is used," *Id.* at 1, and that "yardstick for need is used to determine whether the fam-

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[95] HEW State Letter 1074, Jan. 8, 1970.

[96] Edited by Gladys O. White, 1963.

ily qualifies for a money payment and if so, how much will it be." *Id.* at 4. Finally, as if the above were not sufficiently clear with regard to the state's responsibility for using its standard for determining eligibility, the federal agency advised that a recipient's "income must be applied against *all his needs as measured by the agency's standards.*" *Id.* at 14 (emphasis added). In addition, the HEW statistical division in a periodical report entitled "State Maximums and Other Methods of Limiting Money Payments To Recipients" sets out the agency's view of the states' role in determining eligibility as follows:

> "Each State . . . establishes its own standard *by which eligibility for financial assistance and the amount of the money payment are determined.*" NCSS Report D-3 (October 1970), HEW Social and Rehabilitation Service, National Center for Social Statistics, p. 1 (emphasis added).[97]

These HEW publications are consistent with the procedures set out in the agency's regulations for the determination of need and the amount of payment. Thus, the "method used in determining needs . . . must be one of the three methods described in [HEW's] 'Guides and Recommendations' or a comparable method."[98] 45 C.F.R.

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[97] This report has contained a similar description of the standard of need since at least 1965. See report of same title published by the Welfare Administration Bureau of Family Services Division of Program Statistics and Analysis, April 1965. The Bureau of Family Services, Welfare Administration is now the Social and Rehabilitation Service, Assistance Payments Administration, and the functions of the Division of Program Statistics and Analysis is now performed by the National Center for Social Statistics (NCSS).

[98] "Guides and Recommendations" is HEW *Handbook of Public Assistance Administration*, Supp. A. Section A-3100 notes that the relevant material relating to needs is included in a booklet entitled "Simplified Methods for Determining Needs" previously lodged with this Court by the Solicitor General in *Wyman v. Rothstein*, No. 896, O.T. 1969, and distributed to state agencies with State Letter 712, February 5, 1964.

§ 233.20(a)(2)(iv). Each of the three methods outlined by the agency provides first for the consideration of income in relation to *total* requirements, *i.e.* the standard of need, and requires second the computation of a budgetary deficit (requirement less income) from which the grant may be determined. If any one of the federal procedures are followed, reductions in payment must necessarily be accomplished in a third step by reducing this budget deficit. Reductions to the standard of need prior to consideration of income was not contemplated by the HEW procedures.[99] Finally, as noted earlier, HEW has previously appeared before the court in *Rosado*, *Boddie* and *Rothstein* with the view that the standard of need is the yardstick, or eligibility level for public assistance.[100]

3. *State Letter 1074*.

HEW State Letter 1074 is the first policy issuance in conflict with prior interpretation of the standard of need as the eligibility yardstick. In pertinent part it reads as follows:

> "After determining the net family income actually available (earned income less expenses reasonably attributable to earnings, plus all other income) the

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[99] This is consistent with HEW regulations cited earlier which require payments to be based on the determination of the amount needed (*i.e.* budget deficit), 45 C.F.R. § 233.20(a)(3)(viii), and the HEW Handbook provision which preceded the codified regulation and provided for adjustments "if assistance funds are not sufficient or if maximums preclude the agency from making payments *in accordance with the amount of assistance determined to be needed.*" *Handbook*, Pt. IV, § 3131(7) (emphasis added).

[100] As recently as late November, 1971, HEW has publicly defined the standard of need as the level used to determine eligibility. In a pamphlet apparently distributed to interested groups (not just state agencies) HEW said: "Each State establishes its own 'need standard'. The amount required for the necessities of family living . . . A state will use its 'need standard' as a base for determining eligibility." HEW, Social and Rehabilitation Service, "Myths v. Facts," SRS 71-127, p. 1.

> State can *apply that amount to the assistance standard or to the payment level. However,* pursuant to 402(a)(8) of the Act, *if the total net family income is less than the assistance standard the family is eligible* and the State must use the method for disregarding earned income in accordance with SRS Regulation 233.20(a)(7).
>
> * * * * *
>
> The non-disregarded balance thereof, plus any other non-exempt income, is to be *applied either to the assistance standard or the payment level* in accordance with the State's policies." (Emphasis added.)

Thus, it is this document which provides the underpinning for the agency's view before this Court in this case. In sum, (1) if a family's net income is less than the state's standard of need for that size family, *the family is eligible,* and the applicable income disregards of § 402(a)(8) must be applied;[101] (a) available income (unearned income plus the non-disregarded balance of earned income) may be subtracted from *either* the standard of need, or the "payment level" (*i.e.* the reduced standard).[102] The necessary result is that some persons with income who nonetheless have a "need" under the state "yardstick", the standard of need, are denied aid although concededly "eligible", and *all* persons with income who *do* qualify for aid under 1074 receive payments totally unrelated to the "amount of assistance determined to be needed."[103]

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[101] The consequences of the agency's characterization of the family as "eligible" are significant. See discussion of § 402(a)(10), *infra,* section C.

[102] The "payment level" is the highest money amount which a family with no income can receive—it may be a maximum grant or percentage reduction, or some other level below the standard of need.

[103] The amount of assistance "needed", is the difference between the standard of need and the recipient's available income.

As previously noted, State Letter 1074 is at sharp variance with prior agency definitions of the standard of need in its regulations and policy issuances to the state agencies.[104] An analysis of the events immediately preceding State Letter 1074 provides some prespective into the agency's purpose (which we believe was to undermine § 402(a)(23)). After reviewing that history we shall demonstrate the inconsistency of State Letter 1074 with the decision of this Court in *Engelman v. Amos*, 40 U.S.L.W. 5216 (Nov. 9, 1971), with HEW's position in *Amos* as expressed in its *amicus* in that case and ultimately, with § 402(a)(23).

Our starting point must be a recognition of the fact that prior to the 1967 amendments to the Social Security Act states enjoyed almost untrammeled freedom in allocating their welfare funds. Thus, this Court observed in 1968 that states had the "undisputed power" under the Act "to set the level of benefits and the standard of need." *King v. Smith, supra* 392 U.S. at 334. See also *Dandridge v. Williams, supra*, 397 U.S. at 478 (1970). Thus, absent any restriction on this power, appellants' claim would be an academic one—if a state could freely reduce its standard of need, it would be irrelevant as a practical matter what amount it actually used to determine financial eligibility, since such a state could simply lower its need standard to the financial eligibility level to meet any objections to its use of a reduced standard for such a purpose.

However, this Court specifically held in *Rosado* that the standard of need may *not* be reduced:

> "Section 402(a)(23) invalidates any state program that substantially alters the content of the standard of need in such a way that it is less than it was prior to the enactment of § 402(a)(23). . ." *Rosado*, 397 U.S. at 419.

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[104] It is interesting to note that this policy was issued on January 8, 1970 after the Government filed its *amicus* in *Rosado* and after argument in that case, but three months prior to the decision of the Court (April 6, 1970).

Apart from a difference of opinion as to whether or not all special needs were necessarily part of a state's standard, HEW had earlier reached the same conclusion, namely that § 402(a)(23) imposed a "floor" under AFDC standards. See 45 C.F.R. § 233.20(a)(2)(ii) (which proscribes "a reduction in the content of the standard").[105]

At the same time as the imposition of the restriction of state latitude in setting standards of need, HEW had also begun efforts to require states to accurately define and report their standards. The statistical division of the federal agency, prior to July 1969, had requested all states to identify for reporting purposes their cost standards. The results of the survey were coincidentally published in July, 1969, simultaneously with the effective date of §§ 402 (a)(8) and 402(a)(23), the first two federal intrusions into the states' AFDC need determinations. That report discloses the agency's interpretation of what a standard of need is:

> "The *assistance standards* reported by states were to be those in use as of July 1969 *to determine eligibility for a money payment* and the amount of such payment for which an individual or family is determined to be eligible. Otherwise stated, the amounts were to represent the *de facto* operating *cost standards actually governing entrance into the program* at a particular point in time, as distinguished from a higher theoretical standard which the State has defined and recognized as a goal." NCSS Report D-2 (July 1969), p. 1 (emphasis added).

According to the agency, then, the *assistance standards are those standards which determine eligibility;* while higher theoretical amounts were recognized to exist, they served no practical function except perhaps one relating to public relations, and were not considered by the agency to be standards

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[105] The "floor" is the standard in effect on January 2, 1968 plus an additional amount to account for the cost-of-living adjustment to that standard.

of assistance.[106] Thus, in the summer of 1969, the agency had made clear both that the AFDC standards of need for each state was that level used by the state to govern entrance into the program, and that no reductions in that level would henceforth be tolerated.

The pressure on HEW from state governments unwilling to suffer the consequences of increased AFDC eligibility began to mount, however. While § 402(a)(23) became law in January of 1968, and the states had been given 18 months to comply, as of July 31, 1969, a month after the deadline, forty-one states were designated by HEW as having failed to comply with the updating requirement. HEW, Status of Compliance with Selected Plan Requirements (1969), cited by Rabin, "Implementation of the Cost-of-Living Adjustment for AFDC Recipients: A Case Study in Welfare Administration," 118 Penn. L. Rev. 1143, 1154 n. 41 (1970). HEW's public explanation for its failure to enforce compliance was that "to impose sanctions for state inaction was against both HEW's and NWRO's[107] interests, for the only available sanction was the termination of federal funding, which meant the termination of payments to AFDC recipients." Rabin, *supra* at 1153.[108]

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[106] This view is, of course, consistent with the HEW regulations cited above, see pp. 96 to 98.

[107] NWRO is the National Welfare Rights Organization. NWRO was an active participant in negotiations with HEW on § 402(a)(23) and sought to persuade HEW to obtain state compliance with the statute. NWRO was an original plaintiff in the *Rosado* litigation.

[108] This has frequently been the agency's explanation for tolerating lawless conduct by state welfare departments. See Appendix, *Rosado v. Wyman*, No. 540, O.T. 1969, p. 131. See also, Appendix to opinion of Douglas J., concurring in *Rosado v. Wyman*, 397 U.S. at 429-30. While we do not urge precipitous withholding of funds to coerce compliance, there comes a point in time when respect for federal law is diminished by tolerance of its violation. Moreover, we note that with respect to the four states HEW finally called to conformity hearings in 1970 under 42 U.S.C. § 604 because of non-compliance with § 402(a)(23), while HEW did order termination of

The federal agency did not even distribute its policy instructions to the states regarding implementation of § 402(a)(23) and the HEW regulation, 45 C.F.R. § 233.20 (a)(2)(ii), until October 1969, four months *after* compliance had been required. See Unnumbered HEW State Letter, October 17, 1969, reproduced in the appendix to the Government's *amicus* in *Rosado*. We may assume then that the agency was confronting a difficult question in the summer of 1969—should § 402(a)(23) be enforced as written, with its attendant fiscal and political consequences, or should it be ignored? In a brief submitted to the federal district court in the District of Columbia in response to a suit brought by NWRO to obtain enforcement of § 402(a)(23) by HEW, the Government explained its failure to obtain prompt compliance as follows:

> "[T]he factual background against which Congress had passed the updating provision had changed radically. Section 402(a)(23) was added to the Social Security Act at the same time as the work incentive program of Title IV, Part C. It was Congress' understanding that this and other provisions of the amendments would serve to stabilize, or reduce, the number of people on the AFDC rolls. See H.R. Rep. No. 544, 90th Cong., 1st Sess. 107, 110 (1967). *In such a context, an updating provision, as argued by plaintiffs, which might increase the number of recipients and require additional expenditures, would not impose too great a burden on the States.* Subsequent experience, however, showed a different factual situation. During the time between the passage of the 1967 Amendments and July 1, 1969, the AFDC caseload in most States increased, rather than dwindled, as Congress had expected. *In a national election year, the States were forced to scrutinize rising welfare appropriations very closely.*

AFDC funds; each of those states came into compliance before the actual loss of funds. See Hearings called by the Social and Rehabilitation Service of HEW on the question of the conformity of the Missouri, California, Indiana and Nebraska State Plans under Title IV.

> *Thus, compliance with section 402(a)(23) was demanded in a factual setting neither the Congress or the States had anticipated. In this context, the section acquired a significance for State AFDC programs not previously ascribed to it.*" Brief in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendant's Cross-Motion to Dismiss or for Summary Judgment, *NWRO v. Finch*, No. 2954-69, D.D.C., p. 24 (emphasis added).

Thus, political considerations, and pressure from state agencies unwilling to face the consequences of expanded welfare eligibility, were primary factors in the HEW decision-making process.[109]

It is thus no great surprise, in such a context, that by April 1970, 23 states, unwilling to accept responsibility for the additional eligibles, were using a reduced standard for determining AFDC eligibility (compared to only four in 1968).[110] It was the states' open refusal to obey § 402 (a)(23) and HEW's reluctance to require obedience, that explains State Letter 1074. Thus, for the first time, HEW identified a "payment standard" which could be used to determine AFDC eligibility, as separate and distinct from the standard of need which was theretofore defined by HEW as the eligibility level. See NCSS Report D-2, July 1970.[111] HEW had to redefine its terms since what it had

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[109] Surely if the facts had changed by 1969, the federal agency might have asked Congress to amend or repeal § 402(a)(23). It did not.

[110] Counsel was provided with this information by the Commissioner of the Assistance Payments Administration, Social and Rehabilitation Service, HEW, by letter of November 4, 1971, in response to a request for such information.

[111] HEW redefined its terms in July 1970 as follows:

> "1) *The full standard:* This is the amount with which income from all sources is compared to determine whether or not financial eligibility exists. Use of the full standard for this purpose (where this is different from the payment standard) is mandatory only for AFDC applicant families

earlier shown the Congress in support of its full needs proposal (H.R. 5710) was the actual *de facto* eligibility standards in use in the various states, and thus it was obviously *these amounts* which Congress required to be updated by § 402 (a) (23). Compare Section-By-Section Analysis of H. R. 5710, Comm. on Ways and Means, Committee Print, 90th Cong., 1st Sess., p. 37 with NCSS Report D-2, July 1969, p. 1, and NCSS Report D-2, July, 1970, p. 1.[112] Texas' present 100% standard of need is its *de facto* eligibility standard of January 2, 1968[113] (i.e. its "amounts used to determine need" on that date), as updated to comply with § 402 (a) (23). Surely by updating its eligibility standard and then putting it aside and creating an entirely new eligibility standard, Texas has not satisfied the command of § 402 (a) (23). Such a "circumnavigation" is as effective as the one chosen by New York to evade its responsibilities under § 402 (a) (23).

State Letter 1074 not only radically departed from HEW policies set prior to its issuance in January, 1970, but it continues to represent an aberation in agency policy. Again, without specific reference to § 402 (a) (23), in *Engelman v. Amos*, 40 U.S.L.W. 3216 (Nov. 9, 1971), HEW took the position that the determination of the amount of assistance payment must be directly related to the determination of individual need. In *Amos*, New Jersey had implemented an AFDC regulation which it claimed was a

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with earned income who have not received assistance in any one of the four preceding months.

2) *The payment standard:* This is the amount from which income 'available for basic needs' is subtracted to determine the amount of assistance to which an individual or family is entitled."

[112] The NCSS reports indicate that the "cost standards" shown Congress in 1967 were the *de facto* standards governing entrance into the program.

[113] This is the date of enactment of § 402 (a) (23) and the date which that section fixes upon in setting a floor under the standard of assistance. *Rosado*, 397 U.S. at 419.

valid method for reducing AFDC payments. Under that provision, the state defined an "administrative ceiling" for each size family; that "ceiling" operated to deny AFDC eligibility to any family whose adjusted gross income (income not subjected to the disregards of § 402 (a) (8)) was greater than the ceiling, and to limit AFDC payments for those who remain eligible to the difference between the ceiling and income.[114] A three-judge District Court invalidated this provision as being inconsistent with § 402 (a) (8). *Amos v. Engelman*, No. 1340-69, D.N.J., July 6, 1970.

On appeal the State argued that it had fully complied with §§ 402 (a) (7), (a) (8) which in its view related only to "determining need." New Jersey claimed that the challenged regulation merely was a form of *payment* limitation authorized by *Rosado* and *Dandridge*. HEW urged affirmance. The federal agency rejected New Jersey's characterization of its budgeting method as a reduction in *payments*. HEW based its position on its regulations implementing §§ 402 (a) (7) and (8) (relied upon by appellants here, see *supra* pp. 96-98) which "make no . . . distinction" between "determining need and reduction of benefits." Brief for the United States as Amicus Curiae, *Engelman v. Amos*, No. 931, Term 1970, p. 8. HEW argued that under the Act and its regulations, "the process of 'determining need' includes as a component part the application of any reduction of benefits." *Id.* at 9.

State Letter 1074, similarly permits the bifurcation of the budgetary process. Texas, for example, following the suggestion in State Letter 1074, first determines need by comparing income to the "full standard," or its standard of need. As required by that document, all families with income below that standard are "eligible", and if some of

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[114] The amount of payment would be 100% of the budgetary deficit computed without reference to the ceiling, and taking into consideration the exemptions of § 402(a)(8), or the "maximum" described above, computed by use of the ceiling, whichever was lower.

their income is earned, qualify for the income exemptions provided by § 402 (a) (8). Once the eligibility process is concluded, however, and need for assistance determined by the welfare department, an entirely separate standard is used to compute the amount of payment. Texas, again following State Letter 1074, subtracts all non-exempt income from the "payment standard" (or 50% of the standard of need) in order to arrive at the amount of the grant. Payments in Texas, just as in New Jersey, are not related to the determination of the amount of assistance needed. As HEW noted in its *Amos* brief (p. 9), "the established means for reducing payment levels . . . operate directly on the amount the state is to pay—as by taking a percentage of the amount, or setting a ceiling on it." Texas' method operates on the standard of need, not the individually determined amount needed, or as HEW calls it, "the amount the state is to pay".

Appellants suggest that the Department's *Amos* position (affirmed by this Court) is not compatible with State Letter 1074 and its position in this case,[115] and is a further example of HEW's unwillingness to enforce § 402 (a) (23) consistently with the rest of the Social Security Act.

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[115] It is no answer to argue, as HEW did in its *amicus* in this case (p. 12) that the difference between Texas and New Jersey is that "the Texas method is applied in all benefit calculations", while New Jersey restricted its rule only to those with earned income. Even assuming that would be a meaningful distinction, which we do not, Texas' method too applies differently to persons with earned income as opposed to persons with unearned income. For the former, Texas uses the 100% standard of need to determine eligibility for financial assistance, while the eligibility of the latter group is measured by the percentage reduced standard.

C. Other Provisions of the Social Security Act Evidence a Congressional Intent that All Categorically Eligible Persons with a Financial Need under the State's Standards Receive Some Assistance.

Congressional assumption that the standard of need will be determinative of who gets a cash payment, and that therefore all "needy" and otherwise eligible families must be receiving AFDC[116] (*i.e.* those with income less than the standard), is manifested by specific language in the Act, and is confirmed by considerable legislative history. Acceptance of HEW's and Texas' interpretation of § 402(a)(23) would thus not only nullify that section but would also destroy the symmetry among the provisions of the Act.

In 1967, at the same time Congress enacted § 402(a)(23), it added to the AFDC program a mandatory provision requiring states to disregard a portion of the earned income of AFDC recipients in determining the extent of their need for public assistance. § 402(a)(8), 42 U.S.C. § 602(a)(8). This was the provision at issue in *Engelman v. Amos, supra*. The purpose of this provision, which was a "key element" in the federal work incentive legislation enacted by the Ninetieth Congress, Comm. on Finance, Report on H.R. 12080, S. Rept. No. 744, 90th Cong., 1st Sess. (1967), p. 157, was to encourage AFDC recipients to seek private employment and perhaps eventually end their need for public assistance. *Id.* at 158. See *Connor v. Richardson*, 314 F. Supp. 364 (N.D. Ill. 1970), *aff'd. mem.* 400 U.S. 1003 (1971). The income exemption is thus required to be applied in the determination of need only for dependent children and their caretaker relatives who are "receiving aid." 42 U.S.C. § 602(a)(8). The Senate Finance Committee made absolutely clear to whom the provision would apply:

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[116] A family receives "aid to families with dependent children" when it receives a *money payment*. 42 U.S.C. § 606.

> "[The exemptions] are to become available for AFDC only with respect to persons whose income was not in excess of their needs as determined by the State agency without the application of this provision itself. That is, *only if a family's total income falls below the standard of need will the earning exemption be available.*" Comm. on Finance, Report on H.R. 12080, S. Rept. 744, 90th Cong., 1st Sess. (1967), p. 159.

Thus, Congress understood that those with income below the standard of need would be "receiving assistance," and hence would qualify under § 402(a)(8) for the earnings disregards. Under Texas' method, of course, many families with income less than the standard of need do *not* receive aid, and thus should not qualify for the earnings exemption. But under State Letter 1074 they do.

Many other provisions of the Act evidence a similar Congressional intent that all needy families must be receiving some assistance. Thus, social services designed to foster the strengthening of family life which we discussed in Point I, must be made available to each dependent child and relative "who receives aid to families with dependent children." 42 U.S.C. §§ 602(a)(14), (15). Employment training programs also added with the 1967 amendments are open only to those children over 16 and their relatives who are "receiving aid." 42 U.S.C. §§ 602(a)(19), 632. Medical assistance under Title XIX of the Act is mandatory only for "individuals receiving aid or assistance" under one of the cash assistance programs. 42 U.S.C. § 1396a(a)(10). It is likely, as in the case of § 402(a)(8), that Congress keyed these provisions to those receiving aid since it assumed (and intended) that all persons with income below the welfare standard of need were receiving aid.[117] Finally, federal law requires

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[117] These "concomitant services" were deemed by Judge Wisdom as the primary thrust of the 1967 amendments, and the availability of those services to more families because of their increased eligibility following the § 402(a)(23) updating was the basis for his construction of § 402(a)(23). See *Lampton v. Bonin*, 304 F.Supp. at 1389, and *supra* p. 83.

that AFDC payments be furnished "to all eligible individuals." 42 U.S.C. § 602(a)(10); *Dandridge v. Williams, supra.* Here too Congress intended that those children who were both needy and dependent under the state's standards would receive aid.

Appellants will focus on two of the most important of these federal statutes in order to demonstrate that Congress intended the standard of need to be the "yardstick" for determining AFDC eligibility – the Medicaid provisions of Title XIX and § 402(a)(10), requiring payments to all eligible individuals.

1. Medical Assistance

States participating in the Title XIX medicaid program are required to provide medical assistance to the "categorically needy." That group is defined basically as persons *receiving aid* under one of the categorical assistance programs, 42 U.S.C. § 1396a(a)(10)(A).[118] However, the states were encouraged to provide medical assistance to individuals not receiving cash public assistance by the availability of federal matching on an optional basis for the cost of care to the "medically needy" or "medically indigent." 42 U.S.C. § 1396a(a)(10)(B). See U.S. Senate, Comm. on Finance, Report to Accompany H.R. 6675, H. Rept. 404, Pt. I, 89th Cong., 1st Sess. (1965), p. 9. The statute defines such persons as those "who would, *if needy*, be eligible for aid or assistance" under one of the cash assistance programs (*e.g.*, AFDC) and who meet more liberal income tests. 42 U.S.C. § 1396a(10)(B)(i) (emphasis added). Thus it would appear that Congressional authorization for a more liberal medicaid program was based on the assumption that those who *were* needy under state standards were already

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[118] Also included as "categorically needy" are persons who would have received aid but for a restrictive eligibility requirement in such a program which is specifically prohibited under Title XIX. 42 U.S.C. § 1396a (b).

covered by the mandatory portion of Title XIX since they were already "receiving aid" under one of the cash assistance programs. See also 42 U.S.C. § 1396a(a)(17)(B). Indeed, the report of the Senate Finance Committee specifically refers to the "medically indigent" as "persons who come within the various categories of assistance except that their *income and resources are sufficient to meet their needs for maintenance.*" *Id.* at 77. Again in 1967, contemporaneously with the enactment of § 402 (a) (23), that Committee described the "medically indigent" as "those whose income is too high for them to be characterized by the State as in need of welfare." U.S. Senate, Comm. on Finance, Report to Accompany H.R. 12080, S. Rept. 744, 90th Cong., 1st Sess. (1967), pp. 176-177. The categorically needy, then, persons who are *"receiving aid,"* are those who *are* "characterized by a State as in need of welfare."[119] In Texas, however, many families are denied both AFDC *and* medicaid despite incomes which are too low to meet their basic subsistence needs, families which are characterized by Texas as "in need of welfare," because of a combination of Texas' refusal to determine eligibility for

[119] The description of the "medically needy" in Title XIX was borrowed from the previous medical assistance program established by Congress, Kerr-Mills, 42 U.S.C. § 301 *et seq.* Medical assistance under Kerr-Mills was available (prior to Title XIX) to persons over the age of 65 who were "not recipients of old age assistance." Thus Kerr-Mills sought to liberalize public assistance medical care, available in the form of vendor payments to recipients of OAA, by "reach[ing] beyond the group of those eligible under old age assistance so as to encompass those persons with sufficient resources for their usual needs but not enough for medical costs." Performance of the States – Eighteen Months of Experience With the Medical Assistance for the Aged, 87th Cong., 2d Sess. (1962), p. 7. The individuals "with sufficient resources for their usual needs" were considered by the 1960 Congress to be "those persons not on relief who, presumably, have sufficient resources to meet their ordinary living expenses." *Id.* at 1. Thus even under Kerr-Mills Congress assumed cash public assistance was being provided to aged individuals who were "needy" under state standards, and thus they were covered by medical vendor payments under Title I and did not require Kerr-Mills protection.

an AFDC payment by reference to its assistance standard, and because of its choice not to cover the medically needy. The Texas method thus results in the anomaly that persons who have insufficient income to provide themselves with basic maintenance needs, will be able to obtain necessary medical assistance only if Texas determines to exercise its option to create a medically needy program, a program designed to offer relief from medical costs to those who have sufficient income to meet their basic needs.

Federal regulations promulgated for the medicaid program support our view. They demonstrate, as did HEW's development (without reference to § 402(a)(23)) of accurate reporting of state cost standards, *supra* at p. 103, that HEW's view of the function of the standard of need as the benchmark for determining AFDC eligibility is identical to appellants', except when the agency is specifically concerned with the effect such a position would have on the states' obligations under § 402(a)(23).

Thus HEW regulations require that, to determine medicaid eligibility of the groups of "categorically needy" individuals, "the financial eligibility conditions of the pertinent financial assistance plan [*e.g.* AFDC] will apply." 45 C.F.R. § 248.21(a)(1)(i), 36 Fed. Reg. 3871 (Feb. 27, 1971). With respect to those families who are receiving cash assistance, this requirement is satisfied simply by automatically assuming medicaid eligibility.[120] As noted above (note 118), however, under Title XIX states are required to provide medicaid not only to those receiving AFDC payments, but also to those who could not receive AFDC because they could not satisfy a restrictive AFDC eligibility condition (such as school attendance) which is prohibited under Title XIX. With respect to such persons, the financial eligibility standard had to be defined since it could not be automatically assumed by reference to the receipt of cash assistance.

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[120] Indeed, an application for cash assistance is sufficient – a separate medicaid application need not be filed. 45 C.F.R. § 206.10 (a) (1) (iii).

HEW has made absolutely clear that "[t]he *standards of assistance* for the approved State plan for OAA, AFDC, AB or AABD *constitute the income levels for financial eligibility* for the respective programs." HEW Handbook of Public Assistance Administration, Supp. D, § 4240(B)(1) (emphasis added). It would seem incredible that the 100 percent standard of need would determine eligibility for medicaid for those *not* receiving AFDC because of the lack of school attendance, while 50 percent of the standard could determine medicaid eligibility for those who *are* in school.[121] Such an anomaly is again the responsibility of HEW, since in formulating policy without regard to § 402(a)(23), it once again described the standard of need as the financial eligibility yardstick.

The consequences of Texas' denial of AFDC to many needy families cannot be underestimated. According to the Solicitor General, the value of medical assistance to an average AFDC family in Texas is $50-$60 per month.[122] Thus in

[121] HEW agrees with our interpretation of its regulation, namely that the financial eligibility conditions referred to in 45 C.F.R. § 248.21(a)(1)(i) are the standards of assistance. In an *amicus* brief filed on another issue in Colorado, the agency told the Court:

> "D-4220B.1. and the second paragraph of D-4240.B.1 make it very clear that, for inclusion of categorically needy individuals who are not receiving cash assistance, the financial eligibility conditions of the pertinent State plan for cash assistance will apply. The standards of assistance for these plans [e.g., AFDC] are expressly stated to constitute the income levels for financial eligibility." Brief for the United States as Amicus Curiae, p. 15, *Fullington v. Shea*, 320 F. Supp. 500 (D. Colo. 1970), *aff'd* 40 U.S.L.W. 3249 (Nov. 22, 1971).

This is consistent with other HEW literature describing Title XIX. HEW has noted, for example, that medical "[c]overage is mandatory for . . . members of families with dependent children who meet the minimum eligibility requirements specified in . . . Title IV; and *who are eligible for a money payment under the State's definition of a needy person.*" NCSS Report B-1, May 1970, p. 4. n. 3.

[122] Medical assistance in Texas includes reimbursement for the following care and services: Inpatient hospital care, outpatient hospital

dollar terms alone, the refusal to aid "needy" families under the state's standards is significant; such families not only may have an unmet need for basic subsistence such as food, clothing and shelter which is as much as 25% of their total basic needs (50% under the reduction used in 1969 when the case was first decided), but they will be completely shut off from required medical care. Studies conducted prior to the availability of free medical care under the medicaid legislation, showed that 30% of the persons with family incomes of less that $2,000 spent *nothing at all* on medical care in 1962. See National Center for Health Statistics, *Medical Care, Health Status and Family Income,* at 51 (1964). This startling figure shows clearly that poor persons are forced to forego medical assistance in order to purchase the basic rudiments of life. How much more exaggerated this need must be if such persons are denied the minimal amounts deemed necessary for survival by the state. If appellants prevail, Texas will *not* be required to meet their basic needs in full under the AFDC program. That much we concede. However, Texas would be required to provide federal medical assistance protection to all needy persons. The Congressional mandate we seek to enforce makes practical, as well as legal sense. Medical costs are often catastrophically high. While predictable recurring needs which are in the family's normal range of expenses can be budgeted and planned for, however unhealthy the resulting subsistence may be, medical costs are impossible to plan for and meet in this way. Texas' method for determining AFDC eligibility not only makes subsistence planning for needy families exceptionally difficult, it also deprives them of any resources to meet the medical needs of their children.

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care, physicians' services, nursing home care, laboratory and X-ray services, and limited optometric, chiropractic, podiatric, and ambulance services. State Department of Public Welfare, 1970 Annual Report, p. 19-20.

2. Aid Must Be Furnished to All Eligible Individuals

Appellants submit that HEW's interpretation of §402(a)(23) places that section in direct conflict with another plan requirement, § 402(a)(10), 42 U.S.C. § 602(a)(10), previously construed by this Court in *Dandridge v. Williams, supra* and *King v. Smith, supra.* Since both provisions must be read together, *e.g. Harmon v. Brucker,* 355 U.S. 579 (1958), the conflict must be resolved by requiring the standard of need to be the standard used to determine financial eligibility for AFDC.

Section 402(a)(10) provides that "all individuals wishing to make application for aid to families with dependent children shall have an opportunity to do so, and that *aid* to families with dependent children *shall be furnished* with reasonable promptness *to all eligible individuals.*" (emphasis added). The Texas plan denies aid to "eligible individuals, *i.e.* children and their relative-caretakers with available income greater than the applicable percentage of the standard of need (50% or 75%), but less than the standard of need (the 100% standard) who otherwise meet the definition of dependency set out in federal law. All children who are needy, age-qualified, and deprived of parental support are "dependent children" within the meaning of §406(a), 42 U.S.C. §606(a), and thus denying aid to *some* of those dependent children is contrary to § 402(a)(10). *King v. Smith, supra.* HEW disagrees with our interpretation of §402(a)(10). In its view, "eligible individual" as used in that section "is one who has been found eligible for a payment of benefits, not one who has been found to meet the state's standard of need." *Amicus,* p. 10. In other words, HEW believes that despite the Court's conclusion in *King,* Texas *may* deny aid to some dependent children. We believe HEW's construction is an incorrect one in light of the legislative history of §402(a)(10) and this Court's decision in *Dandridge* (as well as *King* itself).

As noted earlier in the brief, the Social Security Act failed to include a requirement that assistance be furnished by states in sufficient amounts to provide "a reasonable subsistence compatible with decency and health," as originally proposed by the Administration. Thus, the Social Security Board was powerless to condition plan approval on adequate state funding. As related by Arthur Altmeyer, former Chairman of the Social Security Board, this presented a difficult question for the Board, since whenever inadequate state and local funds were appropriated only two alternatives, both undesirable, were available.

> "One method was to spread these funds so that the same proportion of need should be met for every eligible individual. The other method was to meet the minimum need of eligible individuals in the order of their application for assistance. This second method would, of course, result in waiting lists of eligible needy individuals who would be receiving no assistance." Altmeyer, A.J., *The Formative Years of Social Security* (1968), p. 61.

The Social Security Board, and the Bureau of Public Assistance, opted for the second alternative, deeming it "more effective in impressing upon the state legislatures the necessity of providing adequate funds because of the obvious existence of the waiting lists of eligible needy persons." *Ibid.*

In 1949, the Administration recommended an end to waiting lists in all categorical programs as a means of dealing with insufficient funds. H.R. 6000, 81st Cong., 1st Sess. With respect to Old Age Assistance, the Report of the Committee on Ways and Means stated:

> "Applicants who have already been found eligible are kept waiting for assistance until persons on the rolls die or cease to receive assistance for other reasons. In a program supported from public funds such discrimination is unjustifiable. *Available funds should be used for the benefit of all persons who*

> *meet the conditions of eligibility, even if the amount of assistance granted those already on the rolls must be reduced.*" House Comm. on Ways and Means, Social Security Act Amendment of 1949: Report to Accompany H.R. 6000, H. Rept. 1300, 81st Cong., 1st Sess. (1949), p. 43 (emphasis added).

The Committee added that with respect to dependent children "this difference in treatment accorded to eligible persons results in undue *hardship on needy persons* and is inappropriate in a program financed from Federal funds." *Id.* at 48 (emphasis added). What is now §402 (a)(10) was enacted by Congress in August 1950. The federal agency's early approach to inadequate state funding was thus specifically rejected by Congress. *Funds would have to be allocated to all eligible persons even if payments must thereby be reduced.*

Texas' AFDC program violates both the literal language of §402 (a)(10) and the spirit in which it was enacted. The record is replete with statistics as to the sharp increase in AFDC rolls during the years preceding the adoption of the percentage reduction method. Those increases were due undoubtedly to a variety of factors – the elimination of illegal eligibility requirements, poor economic conditions causing high unemployment, even a greater community awareness of the availability of public aid, and the statutory entitlement to it.[123] Further increases in the AFDC rolls should have been expected following the adjustment to the AFDC cost standard implemented May 1, 1969. In

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[123] We have already noted that a substantial increase in the AFDC rolls is attributable to the decision in *King v. Smith, supra.* Appellees reports also show that applications increased by 15% in fiscal 1968, and 23% in 1969. During the same period, application approvals based on the applicants' change in financial need during the year was 72% in 1968 and 67% in 1969, with loss of employment responsible for 39% and 37% of the approvals. See Dept. of Public Welfare 1968 Annual Report, p. 3, and Table 19; Dept. of Public Welfare 1969 Annual Report, p. 11, and Table 19.

order to conserve state funds, an objective entirely permissable under the federal act, Texas has chose the vehicle disapproved by Congress – it has stricken from the rolls many needy families with dependent children to whom it was providing assistance, and is keeping off the rolls those families who were recently recognized as needy after the cost of living adjustment, and who in all relevant respects qualify for assistance (their children are dependent, and they are "needy" under state standards). Appellees and HEW have joined to resurrect the policy originally urged by the Social Security Board, but later discarded by that agency and rejected by Congress in 1950 as the means of alerting the public to inadequate welfare programs.

Our interpretation of § 402(a)(10) is fortified by the decision of this Court in *Dandridge v. Williams, supra,* decided the same day as *Rosado*. In *Dandridge*, the Court rejected the claim that a dollar maximum on family payments completely denied aid to the youngest children in very large families, and thus violated § 402(a)(10). The Court felt that "a more realistic view is that the lot of the entire family is diminished because of the presence of additional children without any increase in payments." 397 U. S. at 477. Since the "practical effect" of the family maximum "is that *all children*, even in very large families, do *receive some aid*," *Id.* at 481 (emphasis added), the Court found no violation of §402(a)(10):

> "We find nothing in 42 U.S.C. § 602(a)(10) that requires more than this. *So long as some aid is provided to all eligible families and all eligible children,* the statute itself in not violated." 397 U.S. at 481 (emphasis added).

The *amicus* concedes that if this Court's interpretation of §402(a)(10) "is a binding construction of the Act" appellants are entitled to prevail, *amicus,* p. 9; but states that in its view all "needy" and otherwise eligible families are *not* "eligible individuals" under § 402(a)(10) and "the [above] quoted language was unnecessary to the decision in Dandridge." *Ibid.*

HEW misconstrues the issue addressed by the Court in *Dandridge*. If it were not required under § 402(a)(10) that each needy and dependent child receive *some* aid, at least via his family's grant, why then did the Court engage in the rather involved analysis it did in order to decide the case? If the language considered dictum by the *amicus* were not necessary to the decision in *Dandridge*, that case could have been disposed of by the simple assertion that Maryland could deny payments to some of its needy and dependent children. Under a construction of the Act which permits the denial of aid to some needy individuals, it would have been quite irrelevant whether or not appellees in *Dandridge* correctly characterized the significance of Maryland's regulation as denying aid completely to the sixth and younger children. But the Court took pains to redefine the question presented, and clearly held in *Dandridge* thatAFDC payments could be limited by reducing the family's total grant, since in so doing each member of the family still received "some aid". Indeed, in his dissenting opinion Justice Marshall took the view that the majority analyzed the maximum grant regulation as it did (i.e. a per capita reduction in the *family* grant) so that it could reach the *required* conclusion that all needy children received some aid. 397 U.S. at 511.[124] See also Douglas, J. Dissenting, *Dandridge*, 397 U.S. at 502.[125] Thus, the only bone of contention on the statutory claim in *Dandridge* was whether each eligible individual was *in fact* being aided where the state limited payments for families beyond a cer-

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[124] Justice Marshall's position was that § 402(a)(10) requires the states to "take into account the needs of, and provide aid with respect to, *all* needy dependent children. Indeed, that was our assessment of the Congressional design embodied in the AFDC program in *King v. Smith* . . ." *Ibid.* (emphasis added.)

[125] Justice Douglas referred to the Court's rationale as an avoidance of the requirement of § 402(a)(10) that financial benefits "reach each individual recipient eligible under the *federal criteria*." *Ibid.* (emphasis added).

tain size. All members of the Court assumed that Maryland could not refuse to aid some children who were needy and dependent as those terms are federally defined. The question posed in this case, then, is easier—some eligible families are completely denied aid by Texas, and thus some needy and dependent children do not receive any aid.

Finally, HEW's position that "eligible individuals" means only persons the state choses to aid, and thus § 402(a)(10) merely serves to outlaw "waiting lists," not only conflicts with the legislative history, *King*, and *Dandridge*, but also with HEW's own position in State Letter 1074 and in its *amicus* in *Engleman v. Amos, supra* (as well as this Court's summary affirmance in *Amos*). First, State Letter 1074, in pertinent part, reads as follows: "if the total net family income is less than the assistance standard the family is eligible." It would appear that this position by the federal agency is diametrically opposed to its view of "eligible individuals" set out in the *amicus*.[126]

Second, the major thrust of HEW's objection to the New Jersey ceiling in *Amos* was that it operated to deny aid to persons "intended to be eligible under the federal act." *Amos amicus*, p. 9, n. 6. According to HEW, "unlike the established means for reducing payment levels, [the New Jersey provision] *does not operate directly on the amount the state is to pay*, – as by taking *a percentage of the amount*, or *setting a ceiling on it*." *Ibid.* (emphasis added.) New Jersey's reduction, complained HEW, operated by considering the family's *total income* and "embodies a judgment that it needs no more." *Ibid.* The crux of HEW's objection to this provision was that:

> "[W]hile reductions of payment level may have disparate effects, [the New Jersey regulation] entirely

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[126] HEW cannot suggest that the eligibility determination referred to *only* applies to those with earned income subject to § 402(a)(8), and not to *all* persons with "income less than the assistance standard" since it was precisely such a procedure which in its view rendered New Jersey's method in *Amos* illegal. See *amicus*, p. 12.

> eliminates benefits for some persons entitled to them under the federal plan. For the individual so affected, it is hard to characterize what the state has done as a mere 'reduction of payment level.' Rather, the determination has been made that he, as an individual, needs no welfare payments. See *Dandridge, supra,* 397 U.S. at 481." *Ibid.*[127]

Texas' method similarly does not operate directly on the "amount the state is to pay," i.e. the budgetary deficit. Instead, Texas applies its reduction to total needs as determined by the state's standard, and uses only the resulting portion of total needs to determine eligibility ("recognizable needs" as Texas characterizes its percentage reduced level). Such a characterization also embodies a judgment that the family needs no more. The evil HEW saw in New Jersey's provision thus inheres in Texas' as well. Texas, by using this method, has eliminated benefits for many persons who are in fact needy under the state's AFDC plan.[128] In sum, appellants contend that the federal act defines the class of eligibles worthy of aid – all needy families (under State standards) with dependent children as defined in the federal act. In the instant case, families such as Mrs. Davila's have needy dependent children but are denied aid. We submit that such families are "eligible" under *federal* criteria (which, with respect to need, relies upon the state's standards), and thus are entitled to some aid under § 402(a)(10). Unless the Court rejects HEW's position on § 402(a)

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[127] The reliance on *Dandridge* at p. 481 is interesting, since it was at that point the Court held that it was unlawful under § 402 (a)(10) to deny an eligible family of *all* aid.

[128] Indeed, HEW candidly admits that the Texas method may deny aid even to some needy families for whom the earned income exemption has been computed (because income was below the standard of need; State Letter 1074). Such a result would obtain if the percentage is sufficiently low. HEW's hypothetical budget for Texas would create this anomaly of persons "eligible" for the income exemption but not for a cash payment, at 52%. *Amicus*, p. 5, n. 3. We note that Texas began using this method at a 50% level and that two states (Louisiana and Alabama) are now below the 52% level.

(23), the statutory commands of Title IV will be in conflict.

D. Congress Has Balanced the Equities and Has Spoken In Favor of Increased Eligibility.

HEW's *amicus* suggests that the provisions challenged herein may have been promulgated in an effort to distribute limited state welfare funds in a way that "assures a greater proportion to those least able to care for themselves." *Amicus*, p. 11. Thus, as the *amicus* notes, if appellants prevail; and Texas decides to maintain AFDC expenditures at the same level, the percentage factor would have to be reduced to the detriment of families with *no* outside income. *Id.* at 7. Appellants do not fail to appreciate the harmful effect on many poor people in Texas should this be the result of their lawsuit. However, they believe that the relative equities were already considered by the Congress, and thus the Court is bound to enforce that legislative judgment. Moreover, it is appellants' view that the equities in any case favor increased eligibility.[129]

It is well to begin by comparing Texas' method of allocating its limited welfare funds with New Jersey's. Unlike New Jersey, Texas uses a device which completely cuts off from cash assistance and medical care thousands of families who under the state's own standards do not have the resources to provide themselves a minimally adequate standard of living.

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[129] It is fair to weigh the possible effects which this Court's interpretation of § 402 (a)(23) might have, since such a consideration may provide a clue as to what Congress may have in fact intended. In *Rosado* too the Court had to look at the "common assumptions" which must be made in the absence of specific intent expressed by the Congress. 397 U.S. at 412. However, given this Court's prior interpretation of § 402 (a)(23) in *Rosado*, the legislative history upon which we rely, and the federal agency's development of its present position, the burden is most definitely on appellees to demonstrate that our interpretation of § 402 (2)(23) is so unreasonable that Congress could not have possibly intended its consiquences.

While we agree with this Court's decision in *Amos* that New Jersey's regulation violated the federal Act, New Jersey did not deny aid to *any* families with total income below the state's minimum need level. Congress may well have considered it an improper use of federal funds to subsidize a state's refusal to contribute *any* of its resources to lessen the plight of a substantial number of its needy children.

Moreover, in considering the various alternatives in 1967, Congress spoke in favor of increasing the availability of work training programs, family counseling and family planning services, and medical assistance, all deemed "vital" by the Ninetieth Congress. See *Lampton v. Bonin, supra,* 304 F. Supp. at 1389; *Rosado v. Wyman, supra,* 397 U.S. at 413. It is not unusual for Congress to accomplish one legislative purpose at the possible expense of another worthy objective.

Thus, in enacting § 402 (a)(8), for example, Congress recognized the unfairness in some families being denied aid who are at the same income level as other families, solely because the latter were already receiving assistance when their incomes were increased by employment. See Comm. on Finance, Report on H.R. 12080, S. Rep't. No. 744, 90th Cong., 1st Sess. (1967), p. 159; *Connor v. Richardson, supra*. But Congress nonetheless was determined to find an approach to encouraging meaningful work as a means of reducing the dependency on public assistance and desiring to limit the cost of such a program, chose to restrict the availability of the incentive provision.

Here too, in § 402(a)(23) Congress determined not to require the much needed increase in AFDC grants across the nation, and compromised in favor of increased eligibility for supplementation and concomitant services. After all, medicaid alone is worth $50 to $60 per month to an AFDC family in Texas. While such an approach may have subjected some recipients to a risk of grant reductions, and

the question may have been a close one, it was not unreasonable for Congress to opt for the alternative we urge it did. That decision was Congress' and may not be abrogated by administrative reluctance to enforce the Congressional will. If Texas believes Congress struck an unwise compromise, its recourse is to the Congress, where its voice is not an unheard one.

CONCLUSION

The judgment of the District Court should be reversed with respect to both the constitutional and statutory claims presented herein and the case should be remanded to that Court for further proceedings consistent with such a disposition.

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Respectfully submitted,

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APPENDIX A

STATES USING PERCENTAGE REDUCTIONS WHICH ARE NOT UNIFORM AMONG THE CATEGORIES (10/70)[1]

States	Highest % in Adult Category	AFDC %[2]	Disparity
Alabama	100% (OAA, AB)	35%	65%
Arizona	100% (OAA, AB, APTD)	65%	35%
Florida	100% (OAA, AB, APTD)	60%	40%
Iowa	100% (AB)	81.2%	18.8%
Kentucky	100% (OAA, AB, APTD)	86.5%	13.5%
Louisiana	100% (OAA, AB, APTD)	51%	49%
Mississippi	100% (OAA,AB, APTD)	30%	70%
New Mexico	100% (OAA, AB, APTD)	90%	10%
North Carolina	100% (OAA, AB, APTD)	86%	14%
Oklahoma	100% (OAA, AB, APTD)	85%	15%
Oregon	100% (AB)	80%	20%
South Carolina	100% (OAA, AB, APTD)	52%	48%
Texas[3]	100% (OAA)	75%	25%
Vermont	100% (OAA, AB, APTD)	89.5%	10.5%
Virginia	100% (OAA, AB, APTD)	90%	10%
Wisconsin	100% (OAA, AB, APTD)	82.9%	17.1%

[1] HEW, Social and Rehabilitation Service, Program Statistics and Data Systems, NCSS Report D-3 (10/70), Table 3 – Special types of public assistance: Method of reducing money payments to recipients in States making reductions, by program, October 1970. According to the Appendix in the *Amicus Curiae* brief filed by the Solicitor General prior to the noting of probable jurisdiction in this case, twelve states, as of September 1971, have applied percentage reductions to their AFDC programs which were not reflected in the NCSS material of October 1970. We are unable to analyze these states in terms of a possible percentage disparity with the adult categories because appellants have no information with respect to these categories later than the October 1970 NCSS Report. However, one of these states is New York which now pays 90% of need in AFDC (which is overwhelmingly Black and Puerto Rican) and continues to pay 100% of need in all adult categories (which are overwhelmingly white). See *Goodwin v. Wyman*, 330 F. Supp. 1038 (S.D.N.Y. 1971), *juris. statement filed*, Term 1971, No. 71-5647.

[2]No distinction has been made in this column between percentage reductions applied to the standard of need before the consideration of income and those applied to the budgetary deficit computed after the consideration of income.

[3]Texas is reflected in this chart as paying 75% of need and thus has a percentage disparity of 25%. As of the date of the district court's original decision, the reduction and disparity were 50%.

APPENDIX B

RACIAL COMPOSITION OF AFDC AND OAA CATEGORIES IN STATES WITH PERCENTAGE DISPARITY GREATER THAN 25%

State	%Disparity [1]	AFDC [2]		OAA [3]	
		White-Anglo	Other	White-Anglo	Other
Alabama	65%	29.1%	70.9%	59.9%	40.7%
Arizona	35%	16.7%	83.3% [4]	74.7% [5]	25.3%
Florida	40%	24.1%	75.9%	63.9%	36.1%
Louisiana	49%	22.4%	77.5%	52.4%	37.7%
Mississippi	70%	13.4%	86.6%	45%	55%
South Carolina	48%	24.5%	75.5%	46.6%	53.4%
Texas [6]	25%	17.5%	82.5% [4]	77.5% [5]	22.5%

[1] See Appendix A.

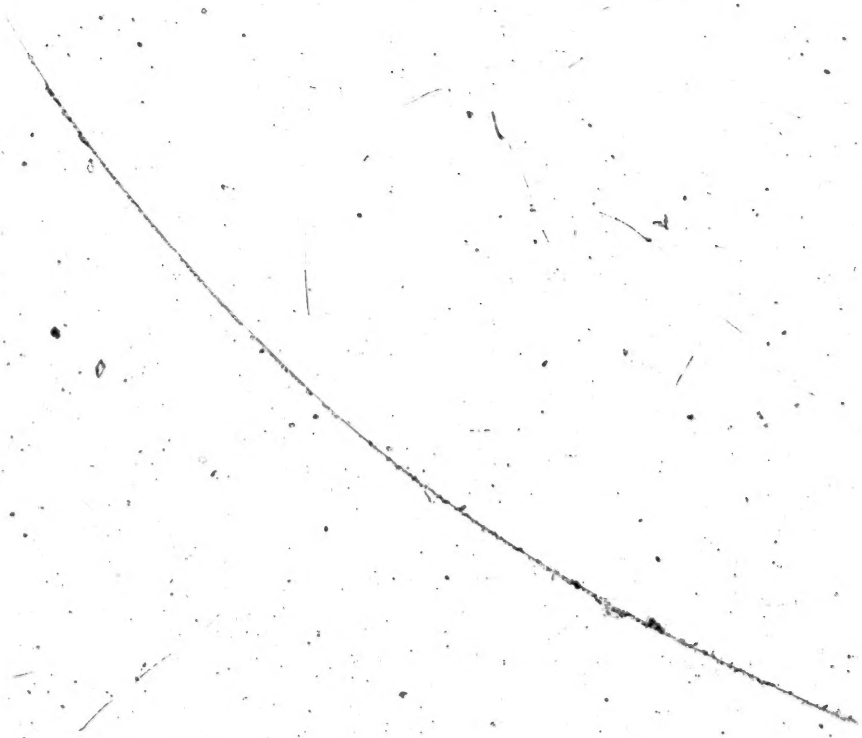
[2] HEW, Social and Rehabilitation Service, July 1970, NCSS Report AFDC-3 (67), Table 2 – AFDC families and recipient children, by race, 1967.

[3] HEW, Welfare Administration, Bureau of Family Services, Division of Research, May 1967, Table 3 – Race and sex of OAA recipients, by State and census division, 1965.

[4] HEW, Social and Rehabilitation Service, July 1970, NCSS Report AFDC-3 (67), Table 3 – AFDC families and recipient children, by Latin American birth or ancestry, 1967. This figure was derived by combining information from two sources, Table 2, cited in footnote 2, and Table 3 cited here. The first distinguishes four categories, "white," "Negro," "American Indian," and "other." The second source provides a further analysis in terms of percentages of recipients of Latin American descent. In examining the data it is evident that this group was reported as "white," in Table 2, but they are considered "other" for the purposes of our analysis.

[5] This figure is probably somewhat inflated since Latin American recipients were presumably reported as "white." No further data for this group was available in the NCSS materials.

[6] The racial composition of the OAA and AFDC programs in Texas shown here differs slightly from the composition stipulated by the parties to this case, obviously reflecting a different sample, taken over a different time period.



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IN THE

Supreme Court of the United States

TERM, 1971

No. 70-5064

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Appellants,

v.

BURTON G. HACKNEY, *et al.*,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

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SUPPLEMENTAL BRIEF FOR APPELLANTS

Appellants submit this supplemental brief pursuant to Rule 41(5) in order to apprise the Court of three recent developments which bear upon the questions presented by this appeal. The first is a recent opinion[1] of the Supreme Court of California (the highest court in that state) which involves the statutory issue raised herein under § 402(a)(23);

[1] *Villa v. Hall*, No. SAC 7907, was decided on December 6, 1971, but received by counsel too late for citation in appellants' main brief. We have lodged with the clerk nine copies of that opinion, and have served it upon appellees and the *amicus* in this case.

the second is this Court's decision in *Townsend v. Swank*, No. 70-5021, decided December 20, 1971 (one week after appellants' main brief was filed) which is directly related to that issue; the third is the filing of a supplemental brief *amicus curiae* by the United States in *Whitfield v. King*[2] which addresses the same questions which appellants here raise in their Equal Protection and Civil Rights Act claim.

I. VILLA v. HALL

Villa involved a challenge to California's method of determining eligiblity for, and the amount of, financial assistance under the AFDC program. After updating its standard of need and payment maximums as required by § 402(a)(23), California sought to change its eligibility and grant determination method by subtracting outside income from the revised maximum, rather than from the standard of need as had been its prior practice. The result would have been to deny AFDC payments to thousands of families who were "needy" under California's revised standard of need, but whose income exceeded the maximum payment level. The California Supreme Court unanimously (7-0) held that such a grant computation and eligibility determination method violated sections 402(a)(7), (a)(8) and (a)(23) of the Social Security Act, 42 U.S.C. §§ 602(a)(7), (8), (23). In so doing that court explicitly held that this Court's interpretation of § 402(a)(23) in *Rosado v. Wyman* (namely that that section was intended to increase AFDC eligibility by virtue of the cost-of-living increase to the standard of need), and this Court's definition of a "ratable reduction" in *Rosado*, 397 U.S. at 409, n. 13 (namely that income must be deducted *prior* to application of the percentage reduction), were both *necessary* to the decision in *Rosado* and were *not* dicta as suggested by the Solicitor General.

---

[2]Civil Action No. 3330-N, M.D. Ala., filed on December 27, 1971. We have lodged with the clerk nine copies of that brief, and have served it upon appellees and the *amicus* in this case. The copies we have filed have been retyped verbatim since the copy with which we were provided was unsuitable for reproduction.

Extended analysis of *Villa* in this supplemental brief is unnecessary since the opinion clearly sets forth the basis for the court's conclusion. We note, however, that the California court's reasoning parallels appellants' argument in Point II, sections A and B(2) of our main brief and is identical to the rationale of the three judge court in *Alvarado v. Schmidt*, 317 F. Supp. 1027 (W.D. Wisc. 1970), discussed at pp. 86-87 of appellants' main brief.[3]

II. TOWNSEND v. SWANK

Appellants argued in their main brief, pp. 117 to 124 that if § 402(a)(23) were not read to require the revised standard of need to be used to determine AFDC eligibility, then that section would be in conflict with § 402(a)(10). We urged that § 402(a)(10) as construed in *Dandridge v. Williams*, and *King v. Smith* required that *some* aid be given *all* families eligible under the *federal* criteria set forth in § 406 of the Social Security Act.[4] The Court's decision in *Townsend* confirms our interpretation of § 402(a)(10) and places that section in conflict with HEW's interpretation of § 402(a)(23).

---

[3]While the *Villa* court suggests that there are some differences between maximums and percentage reductions, its holding as to the effect of § 402(a)(23) as interpreted in *Rosado* clearly applies to *both* methods. See, e.g., Slip op. at 13. The California Court may well have been reluctant to purport to decide a question not specifically before it under California's statute which it knew was pending before this Court for decision. Further, the *Villa* court's suggestion at p. 10 that § 402(a)(23) *alone* may not have compelled its conclusion may reflect the fact that § 402(a)(23) was not pleaded in *Villa*, and that California's revised maximum may have been *greater* than its previous standard of need. If that were true, § 402(a)(23) would have been satisfied since eligibility would have been increased sufficiently. In Texas, however, the eligibility level is 75% of the standard of need, and the standard of need is at the minimum level required by the § 402(a)(23) updating. Thus in Texas, § 402(a)(23) alone would compel the result appellants request.

[4]Appellants also argued that *Engelman v. Amos*, 92 S.Ct. 181 (1971), and the United States' position as *amicus* in that case, compelled this reading of the Act.

In *Townsend* the Court held that:

> "*King v. Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause." Slip op. at 4.

Section 406 defines a "dependent child" as one who is needy (under state standards), is age-qualified and has an absent parent. Plaintiff Davila, and the approximately 2,500 other families denied aid by Texas despite income below the standard of need, thus stand in the same position as did appellants in *Townsend*. Although they are needy and meet the other characteristics of dependency in § 406, and thus are eligible under the federal test of § 406, they have been denied AFDC payments by application of a state eligibility test more narrow than § 406.[5] HEW's interpretation of the term "eligible" in § 402(a)(10), namely that it refers to only eligibility under *state* criteria, was rejected in *Townsend*, and thus as HEW candidly conceded, under such an interpretation of § 402(a)(10) appellants herein must prevail. See *Amicus* at p. 9.

III. WHITFIELD v. KING *AMICUS*

Although this Court invited the Solicitor General to file a brief in this case expressing the views of the United States, he has done so only with regard to the question presented under § 402(a)(23) of the Social Security Act. The Memorandum for the United States filed in June, 1971 noted that to the extent appellants' equal protection claim rests on

[5] While the state has latitude in setting its standard of need, once it sets that standard all families otherwise eligible who meet the state test of financial need are within the purview of § 406, since they are "needy," and must be provided some aid under § 402(a)(10). That clearly was the holding in *Dandridge*.

factual considerations with regard to the alleged racially discriminatory purpose or effect of the Texas payment policies, "they are best left to the parties for argument."[6] However, pursuant to the district court's specific request in *Whitfield v. King*, that the United States discuss the constitutional challenge to Alabama's program (35% of need paid to AFDC recipients, as opposed to 58% in APTD, and 100% in AB and OAA), the United States Attorney has recently filed a brief which considers the question.

We note that the *Whitfield amicus*, while not taking an ultimate position as to how the percentage disparity question should be resolved, does confirm appellants' view of the common purpose of the various Social Security Act titles:

> "Departmental regulations have long recognized that the common underlying purpose of all the programs is to provide subsistence level support for qualified persons, and that 'the basic requirements of all people are the same regardless of which program serves them.' Department of HEW. Simplified Methods for Determining Needs (1966)."[7]

Moreover, the federal government's *amicus* also supports appellants' position that a state's determination to set AFDC payments at a lower percentage of the standard of need than OAA payments is totally unrelated to the needs of the respective recipients, but is essentially a fiscal device:

> "While different standards of need could administratively be determined appropriate based on a finding that members of some categories typically incur higher-than-average living costs (e.g., a blind person may need a seeing eye dog and a part-time reader), the percentage reductions in payment levels challenged by plaintiffs are not based upon such an analysis. While they may or may not have subsidiary purposes, such cutbacks are essentially fiscal measures unrelated to the determined needs of welfare recipients."[8]

---

[6] *Amicus*, p. 12.

[7] *Whitfield amicus*, p. 12.

[8] *Whitfield amicus*, pp. 14-15.

CONCLUSION

The recent developments since the filing of appellants' main brief reinforce appellants' request for a reversal of the judgment below.

Respectfully submitted,

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Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION.

BRIEF FOR APPELLEES

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Appellants

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BURTON G. HACKNEY, ET AL.,
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

BRIEF FOR APPELLEES

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES

COME NOW the Appellees, Burton G. Hackney, Commissioner of the Texas State Department of Public Welfare, Will Bond, Chairman of the Texas State Board of Public Welfare, W. Kendall Baker, Vice-Chairman of the Texas State Board of Public Welfare, Louis Sarazan, Secretary of the Texas State Board of Public Welfare, and Rosalind Giles, Director of Field Staff, Dallas Regional Office of the Texas State Department of Public Welfare, and file Appellees' Brief in response to Appellants' Brief heretofore filed.

STATEMENT OF THE CASE

This is an appeal by the Appellants, Ruth J. Jefferson, Emma Gibson and Jose Apolinar Vasquez, from the judgment entered below on the 4th day of August, 1970, (App. 160), in a class action commenced by the Appellants against the Appellees, officials of the Texas Department of Public Welfare, wherein the Appellants sought: (1) a declaratory judgment holding invalid certain regulations of the Texas State Department of Public Welfare which limited AFDC grants to a specified percentage of recognized needs; (2) an injunction to restrain the implementation of these regulations of the Texas Department of Public Welfare which restrict the amount of assistance for AFDC recipients to a percentage of unmet or recognized budgetary need which is less than that granted to recipients in the other categories of welfare assistance, namely, OAA (Old Age Assistance), AB (Aid to the Blind), and APTD (Aid to the Permanently and Totally Disabled); and (3) an injunction prohibiting payments of assistance less than the unmet budgetary needs.

The Appellants are recipients of the Aid to Families with Dependent Children program (AFDC) administered by the State of Texas through the Texas State Department of Public Welfare pursuant to the provisions of Article 695c, Vernon's Civil Statutes. The AFDC program is one of several similar programs for needy persons in the State of Texas which is operated on a cooperative basis with the Federal Government pursuant to the Social Security Act and specifically 42 U.S.C. §601, et seq.

The Appellants' contentions in regard to the challenged regulations and action by the State of Texas were that they violated the Equal Protection Clause

of the Fourteenth Amendment and violated the provisions of the Social Security Act, and specifically 42 U.S.C. §602(a)(23) thereof.

The court below entered judgment on the 1st day of July, 1969 (App. 109), amended in certain respects on the 14th day of August, 1969 (App. 155), on the grounds set forth in the written opinion (App. 112). The court below denied the relief sought by Appellants pursuant to their Equal Protection Clause argument, but sustained the position of the Appellants in connection with their statutory contentions.

On appeal from the initial judgment of the court below, this Court on May 4, 1970 (App. 158), vacated the judgment of the court below for further consideration in light of *Rosado v. Wyman*, 397 U.S. 397, thereafter, the court below on the 4th day of August, 1970, entered its judgment (App. 160) denying the relief sought by the Appellants upon both the statutory and Equal Protection grounds urged by Appellants.

Thereafter, on the 14th day of August, 1970, the Appellants sought to have the court below amend its judgment because of the manner in which the Appellees were determining eligibility of AFDC applicants, an issue neither plead nor urged heretofore (App. 163). The court below denied the requested amendment sought by Appellants on the 23rd day of September, 1970 (App. 170).

From the foregoing Appellants gave notice of appeal (App. 171), and on the 12th day of October, 1971, this Court noted probable jurisdiction (App. 172).

OPINION BELOW

The opinion of the United States District Court for the Northern District of Texas, Dallas Division,

rendered on the 1st day of July, 1969, is reported as *Jefferson, et al. v. Hackney, et al.*, 304 F.Supp 1332 1969), and is also set forth in the Appendix at page 112.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

1. The Fourteenth Amendment to the Constitution of the United States provides in part that:

> "... nor shall any state ... deny to any person within its jurisdiction the equal protection of the the laws."

2. Section 601 of the Civil Rights Act of 1964, 42 U.S.C. §2000-d, provides that:

> "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

3. Section 402(a)(23) of the Social Security Act, 42 U.S.C. §602(a)(23), provides in part that:

> "A State plan for aid and services to needy families with children must ....
>
> "(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

4. The regulations here challenged by the Appellants are set forth in their entirety in Office Memorandums E-430 and E-434 (App. 94-108).

QUESTIONS PRESENTED

1. Whether the payment by Texas of a substantially lower percentage of State determined needs to recipients of AFDC than is provided to recipients with the same needs in the adult programs, OAA, AB and APTD, deprives Appellants of the equal protection of the laws to which they are entitled, and of their right under the Civil Rights Act of 1964 to be free from racial discrimination in a federally financed program?

2. Whether the use by Texas of something other than the adjusted standard of need in determining eligibility for benefits pursuant to the AFDC program violates Section 402(a)(23) of the Social Security Act?

SUMMARY OF ARGUMENT

The Appellants, in their initial question presented to this Court for consideration, are actually complaining about the allocation of available funds which the Legislature of the State of Texas has made between the four categories of welfare recipients in Texas.

The Constitution of the State of Texas places a limit upon the total amount of funds which the Legislature of the State of Texas can appropriate for the fiscal funding of welfare assistance grants for the categorical welfare assistance programs. The allocation of the available funds between the four categories of welfare recipients by the Legislature is the basis for Appellants' complaint that there has been a violation of the Equal Protection Clause of the Fourteenth Amendment and the Civil Rights Act of 1964.

The thrust of Appellants' argument is twofold. First, the Appellants urge that any allocation of funds between the various categories of welfare assistance

must result in each category of welfare assistance being paid the same percentage of recognized need and that there can be no variance between the categories in percentage of recognized need paid. At the time of the initial proceeding in this case Texas was paying 100% of recognized need in OAA, 95% in APTD, 95% in AB and 50% in AFDC.

Secondly, the Appellants have urged that the reason for the difference in allocation of funds between the various categories of welfare assistance programs by the Legislature of Texas is racially motivated or has the effect of discriminating against minority groups.

The Appellees submit, in rebuttal to Appellants contentions, that the allocation of funds by the Legislature of Texas between the various categories of welfare assistance is neither a violation of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States nor the Civil Rights Act of 1964. Such cases as *King v. Smith,* 392 U.S. 309 (1968) and *Dandridge v. Williams,* 397 U.S. 471 (1970) clearly recognize that the states have great latitude in dispensing available funds, and in the instant case there exists constitutionally sufficient reasons for the allocation of funds between the various categories of welfare programs in the manner which was done by the Legislature of the State of Texas.

As to Appellants' argument concerning racial implications allegedly involved in the allocation of funds between the welfare programs, the record before this Court clearly demonstrates, as the court below so held, that such allocations were neither motivated by nor resulted in discrimination against minority groups.

The final question raised by the Appellants in this appeal concerns itself with whether the provisions of

42 U.S.C. §602(a)(23), which required the states by July 1, 1969, to adjust the amounts used in determining the need of individuals to reflect changes in living costs, will be extended in such manner as to require the states to use this adjusted standard of need as the only basis of determining eligibility to receive welfare benefits.

Contrary to the position of the Appellants, the Appellees submit that neither the provisions of 42 U.S.C. §602(a)(23) nor the decision of this Court in *Rosado v. Wyman,* 397 U.S. 397 (1970), deal with any other issue than that of requiring that the states adjust their recognized standards of needs to reflect the cost of living increases. 42 U.S.C. §602(a)(23) requires no adjustment of eligibility requirements, only recognized standards of need, and this Court did not in *Rosado v. Wyman, supra,* nor should it have, required an adjustment of eligibility requirements such as sought by Appellants. This Court in *Rosado v. Wyman* specifically rejected a contention that 42 U.S.C. §602 (a)(23) required an absolute increase in benefit levels and left the states free to employ ratable reductions, such as Texas has done. It would indeed be inconsistent to take this position as to the standards of need issue and then resort to an entirely different concept in determining eligibility.

In addition, the only statutory basis asserted by Appellants in this appeal deals with an issue not related to the Appellants or the class they represent. No Appellant in this appeal has been denied eligibility and no justiciable controversy as to this issue exists between the parties.

ARGUMENT

"Whether the payment by Texas of a substantially lower percentage of State determined needs

to recipients of AFDC than is provided to recipients with the same needs in the adult programs, OAA, AB and APTD, deprive Appellants of the equal protection of the laws to which they are entitled, and of their right under the Civil Rights Act of 1964 to be free from racial discrimination in a federally financed program?"

The equal protection and civil rights arguments of the Appellants are based entirely upon the manner in which the Legislature of the State of Texas has allocated the available funds between the categorical welfare assistance programs administered by the State of Texas. Because of the allocation of funds by the Legislature to these various welfare assistance programs at the time this proceeding commenced the Appellees were able to pay 100% of the recognized need in the OAA program, 95% in the AB program, 95% in the APTD program, and 50% in the AFDC program. (Since the commencement of this proceeding the State of Texas has, by amendment of its Constitution, increased the ceiling on welfare assistance grants from $60,000,000 to $80,000,000 and the percentage of recognized need which can be paid in the AFDC program has increased from 50% to 75%.)

The Appellants first contend that there has been a violation of the Appellants' Fourteenth Amendment rights under the Equal Protection Clause because the Legislature has appropriated the available funds it has for welfare assistance grants between the various categories of welfare recipients in such a manner as to discriminate against one segment of needy individuals —namely, those in the AFDC program. Appellants contend that the allocation of these available funds must be made between OAA, AB, APTD and AFDC

in such a manner that no program will receive any preference or different treatment than another.

To more clearly reply to Appellants' contentions it would be advisable at this point to set forth some of the history of the development of welfare assistance in Texas as well as the general fiscal operations involved.

In 1935 Congress provided for the various categories of public welfare—Old Age Assistance (OAA) 42 U.S.C. Sec. 301, Aid to Families with Dependent Children (AFDC) 42 U.S.C. Sec. 601, Aid to the Blind (AB) 42 U.S.C. Sec. 1201, and Aid to the Permanently and Totally Disabled (APTD) 42 U.S.C. Sec. 1351.

Section 51-a of Article III of the Constitution of Texas authorizes the Legislature of the State of Texas to provide for assistance grants for Old Age Assistance (OAA), Aid to the Blind (AB), Aid to the Permanently and Totally Disabled (APTD), and Aid to Families with Dependent Children (AFDC), and medical assistance for all non-categories. However, such constitutional provision limited the Legislature to an expenditure of $60,000,000 for assistance grants for the four categories for any one year at the time of the commencement of this litigation. A constitutional amendment has since been enacted raising the constitutional limit to $80,000,000.

The significance of the foregoing constitutional provision can more readily be seen when considered with Section 51 of Article III of the Constitution of Texas which places a prohibition upon the Legislature that it:

> ". . . shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individu-

als, municipal or other corporations whatsoever . . ."

Section 51-a of Article III of the Constitution of Texas acts as an exception to the provisions of Section 51 of Article III of the Constitution of Texas, and thereby allows the Legislature to participate in OAA, AB, APTD and AFDC programs. However, the extent of such participation was limited by the Constitution of Texas to $60,000,000 for assistance grants at the time this suit commenced and is still limited but such limit has been increased to $80,000,000.

House Bill 5, Acts 60th Legislature, First Called Session, 1968, was the General Appropriations Bill for the State of Texas for the fiscal year commencing September 1, 1968, and ending August 31, 1969, the period when this suit was filed. In the departmental appropriation to the Texas Department of Public Welfare, the Legislature had appropriated the sum of $48,200,000 for assistance payments to OAA recipients; the sum of $1,400,000 for assistance payments to AB recipients; the sum of $4,250,000 for assistance payments to APTD recipients; and the sum of $6,150,000 for assistance payments to AFDC recipients.

At the present time, in the departmental appropriation to the Texas State Department of Public Welfare, the Legislature of the State of Texas has appropriated the sum of $50,000,000 for assistance payments to OAA recipients; the sum of $1,400,000 for assistance payments to AB recipients; the sum of $5,500,000 for assistance payments to APTD recipients; and the sum of $23,100,000 for assistance payments to AFDC recipients. As can be readily seen the money allocated by the Texas Legislature to AFDC has almost quadrupled in the last two years while the allocation to other categories has remained the same or risen only slightly.

It might also prove helpful at this point to provide a historical background regarding the development of welfare funding in Texas which has its basic source in the Texas Constitution.

In 1933, Section 51-a of Article III of the Constitution of Texas was adopted which authorized the issuance and sale of bonds of the State of Texas not to exceed the sum of $20,000,000, ". . . the proceeds of the sale of such bonds to be used in financing relief and work relief to needy and distressed people and in relieving the hardships resulting from unemployment . . ." S.J.R. No. 30 of the 43rd Legislature, 1933.

In 1935, the Constitution was again amended so as to authorize Old Age Assistance to "actual bona fide citizens of Texas who are over the age of sixty-five (65) years . . ." H.J.R. No. 19 of the 44th Legislature, 1935. Article III, Section 51-b, Constitution of Texas. The maximum grant out of State funds was $15.00 per month per recipient.

In 1937, the Constitution was amended to provide for assistance "to destitute children under the age of fourteen (14) years . . ." H.J.R. No. 26-a of the 44th Legislature, 1937. Article III, Section 51-d of the Constitution of Texas. The maximum grant out of State funds was not to exceed $8.00 per month for one child, nor more than $12.00 per month for children in one family, with a maximum overall limit out of State funds not to exceed $1,500,000 per year.

In 1945, the above referred to amendments were consolidated into Section 51-a of Article III of the Constitution of Texas, as well as broadening the class of citizens eligible to receive grants of public moneys by the State of Texas. H.J.R. No. 13 of the 49th Legislature, 1945. The foregoing limited payments out of State funds per individual to $20.00 for Old Age

Assistance; provided no individual limit for Aid to the Blind; and removed the maximum for Aid to Dependent Children; and placed a $35,000,000 per year limit on State funds for the three programs combined.

In 1954, an amendment was made to Section 51-a of Article III of the Constitution of Texas. S.J.R. No. 7 of the 53rd Legislature. This provision provided a maximum of $20.00 out of State funds for Old Age Assistance per individual and raised the ceiling of total expenditures on the part of the State from $35,000,000 to $42,000,000.

In 1956, amendments to Article III, Section 51-b-1 were adopted. H.J.R. No. 30 of the 54th Legislature. This provided for Aid to the Permanently and Totally Disabled and placed a limit not to exceed $20.00 per month per individual, and a total overall maximum out of State funds not to exceed $1,500,000 per year.

In 1958, Section 51-a-1, Article III of the Constitution of Texas was added. H.J.R. No. 36 of the 55th Legislature. This provided for vendor medical care on behalf of Old Age Assistance, Aid to the Blind, Aid to Dependent Children and Aid to the Permanently and Totally Disabled. The only limit as to amounts was that the expenditure of State funds could not exceed payments out of Federal funds.

In 1957, an amendment was adopted to Section 51-a of Article III of the Constitution of Texas. H.J.R. No. 2 of the 55th Legislature. This amendment placed a maximum of $25.00 per Old Age Assistance recipient, or $21.00 until additional amounts were matched by the Federal Government. This provision raised the ceiling from $42,000,000 to $47,000,000 payable from State funds.

In 1962, an amendment was enacted to Section 51-a of Article III of the Constitution of Texas. S.J.R. No. 9 of the 57th Legislature. This constitutional amendment raised the ceiling from $47,000,000 to $52,000,000 for Old Age Assistance, Aid to the Blind, and Aid to Dependent Children. This provision retained the maximum of $25.00 per individual Old Age Assistance recipient.

In 1962, an amendment was made to Section 51-b of Article III of the Constitution of Texas. S.J.R. No. 7 of the 57th Legislature. It raised the ceiling in connection with the Aid to the Permanently and Totally Disabled from $1,500,000 to $2,500,000.

In 1963, an amendment was made combining Sections 51-a and 51-b-1 of Article III of the Constitution of Texas to be known as Article 51-a. It dealt with Old Age Assistance, Aid to the Blind, Aid to Dependent Children and Aid to the Permanently and Totally Disabled. This provision raised the ceiling from $52,000,000 to $60,000,000 and changed residence requirements on all programs. The dollar maximum on individual Old Age Assistance cases was deleted. S.J.R. No. 21 of the 58th Legislature.

In 1965, an amendment combined Section 51-a and Subsections 51-a-1 and 51-a-2 of Article III of the Constitution of Texas to be known as Section 51-a of Article III of the Constitution of Texas. It provided for assistance grants for Old Age Assistance, Aid to the Blind, Aid to Families with Dependent Children and Aid to the Permanently and Totally Disabled, and medical assistance for all categories, and medical assistance for all non-categories. A $60,000,000 maximum on grants only was retained. H.J.R. No. 81 of the 59th Legislature.

S.J.R. No. 8 of the 61st Legislature, which was adopted on August 5, 1969, constitutes the present Section 51-a of Article III of the Constitution of Texas. The ceiling was raised from $60,000,000 to $80,000,000 on assistance grants which could be made to the four categories of recipients—the aged (OAA), the blind (AB), the totally and permanently disabled (APTD) and dependent children (AFDC).

See also *Jefferson v. Hackney,* 304 F.Supp. 1332 (N.D. Tex. 1969) (App. 112) for a further historical background of the constitutional amendments pertaining to public welfare assistance.

As can be seen by the foregoing development of welfare assistance in Texas, the Legislature has always been limited by the Constitution of Texas in the total amount of public funds it may appropriate for welfare assistance grants and is presently operating under an $80,000,000 limitation. In addition, it was only by constitutional amendment in 1965 that the Legislature of Texas was freed from the additional constitutional limitation as to the amount of public funds which it could allocate by appropriation between the various categories of welfare assistance.

Consequently, for only a period of six years has the Legislature had any discretion as to how the allocation of available funds between the various categories would be made.

With this background in mind, of what merit is there to Appellants' initial contention that the allocation of funds by the Legislature of Texas must be done in a completely equal manner whereby no particular category of public assistance recipients is favored, in the division of public funds, over another? Appellees submit that this contention is wholly lacking in

merit and has already been decided adversely to Appellants by this Court.

In *King v. Smith,* 88 S.Ct. 2128, 392 U.S. 309, 20 L.Ed.2d 1118 (1968), this Court had before it a case dealing with the AFDC program, and in its opinion stated that:

> ". . . There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits *by the amount of funds it devotes to the program.* . . ." (Emphasis added.)

In *Dandridge v. Williams,* 397 U.S. 471 (1970), this Court had before it another case dealing with the AFDC program, and held that:

> "In King v. Smith, supra, we stressed the States' 'undisputed power,' under these provisions of the Social Security Act, 'to set the level of benefits and the standard of need.' Id. at 334. We described the AFDC enterprise as 'a scheme of cooperative federalism,' id., at 316, and noted carefully that '[t]here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program.' Id., at 318-319.
>
> "Congress was itself cognizant of the limitations on state resources from the very outset of the federal welfare program. The first section of the Act, 42 U.S.C. §601 (1964 ed., Supp. IV), provides that the Act is
>
> > 'For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State,* to

needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. . . .' (Emphasis added.)

Thus the starting point of the statutory analysis must be a recognition that the federal law gives each State great latitude in dispensing its available funds."

The foregoing authorities leave no doubt that the states are given wide latitude in how they feel they can make best use of their limited fiscal resources in administering their welfare programs.

As noted by the court below in its opinion:

"The Texas Legislature was confronted with a ceiling of $60,000,000.00 to be spent for the four categories of public welfare. No more than that amount could be appropriated by the Legislature and *it was the duty of the Legislature to use its judgment in the manner and the amount the available money should be divided.*" (Emphasis added.)

This statement clearly recognizes the legislative rather than judicial function involved in the allocation of public funds by state legislative bodies, and discloses that the court below has followed that warning sounded by this Court in its very last statement in *Dandridge v. Williams, supra,* when it stated:

". . . the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Cf. Steward Mach. Co. v. Davis, 301 U.S. 548, 584-585; Helvering v. Davis, 301 U.S. 619, 644."

In the instant case there are certainly numerous reasons why the Legislature of the State of Texas might see fit to spend less money on the AFDC program than on the programs dealing with aid to the aged, blind and disabled In the case of the aged, the blind and the disabled, their circumstances are unlikely to ever improve, and their opportunities for gainful employment are practically nil. In addition, there is frequently no one to whom the State can look who is legally responsible for caring for this class of individuals. However, this is not true as applied to the AFDC program. To start with, these needy children as they mature will hopefully be gainfully employed and no longer in need of welfare assistance. Also, many of the needy children are of an age where they themselves can contribute financially to their standard of living, by working and frequently the parent or parents of the children are young and can obtain gainful employment. In addition, there is frequently someone to whom the State can resort for contributions to the support of the needy children—for example, a divorced father by way of child support payments.

It is submitted that the foregoing constitutes ample reason for the Legislature of the State of Texas in deciding to allot a lesser amount of money for the operation of the AFDC program than to programs involved with the care of the aged, disabled and blind.

The court below also recognized the various constitutionally sufficient reasons that the Legislature could have considered in the allocation of funds between the various programs and concluded that:

> "Considering the different purposes of programs in the Social Security Act and the differences in the capacity for self-help among recipients in the various categories, we cannot say that

the action of the Legislature in providing less assistance for AFDC recipients than for the other recipients of welfare was 'without any reasonable basis and therefore . . . purely arbitrary.' Morey v. Doud, supra."

It might also be noted at this point that the Appellants also complain of the fact that the court below used the traditional equal protection test in passing upon the action of the Legislature of Texas rather than applying the "compelling interest test" whereby the State would be required to show some compelling governmental interest to justify the difference in allocation of public funds between the welfare programs.

However, this Court in *Dandridge v. Williams, supra,* disposed of this question adversely to Appellants' position when it held:

"In the area of economics and social welfare a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' McGowan v. Maryland, 366 U.S. 420, 426.

"To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause, have in the main involved state regulation of business or industry. The administration of public welfare assistance,

by contrast, involves the most basic economic needs of impoverished human beings. We recognize the dramatically real factual difference between the cited cases and this one, but we find no basis for applying a different constitutional standard. See Snell v. Wyman, 281 F.Supp. 853, aff'd, 393 U.S. 323. It is a standard that has consistently been applied to state legislation restricting the availability of employment opportunities. Goesaert v. Cleary, 335 U.S. 464; Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552. See also Flemming v. Nestor, 363 U.S. 603. And it is a standard that is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy."

Consequently, the Appellees submit that the initial argument advanced by Appellants, that there must be an equal allocation between the various categories of welfare programs to satisfy the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, is lacking in merit and the court below was correct in so holding.

In a footnote to the previously cited statement in *Dandridge v. Williams, supra,* the Court noted that it was important to note that there was no contention that the Maryland regulation being challenged was infected with a racially discriminatory purpose or effect such as to make it inherently suspect. This then brings us to the second aspect of Appellants' initial question.

The Appellants contend that the reason for the difference in monetary allocation between the various categories of welfare assistance programs by the Legislature of Texas was racially motivated or has the effect of discriminating against minority groups. Such

assertions are ones easily made, but often difficult for the accused to rebut especially if naked assertions are allowed to suffice for proof.

Appellees submit that Appellants' argument of racial motivation or effect constitutes nothing more than unsupported allegations and the record before this Court lends itself to no other conclusion, as was recognized by the court below when it held:

> "Under the foregoing undisputed facts we are of the opinion that plaintiffs have failed to make a sufficient showing of racial or ethnic discrimination to require us to declare void under the Equal Protection clause or under the Civil Rights Act of 1964 either the Legislative Appropriations bill or Section 51-a of Article III of the Texas Constitution."

A review of the evidence in the record is the only way to discover the lack of merit in Appellants' contentions, and in this respect the comments of the court below are most revealing and are set forth as follows:

> "Plaintiffs' next contention is that the discrimination against the AFDC recipients vis-a-vis other welfare recipients is the result of racial or ethnic prejudice and is violative of the Equal Protection clause of the Fourteenth Amendment and a violation of the federal civil rights enactments.
>
> "Plaintiffs point to past policies in Texas as evidence that the reductions in AFDC benefits were racially discriminatory. Plaintiffs specifically point to the 'man in the house' policy prior to the decision in King v. Smith, 392 U.S. 307 (1968), and the 'suitable home' policy designed to exclude children because of their mother's allegedly improper behavior.
>
> "As evidence of present discrimination plaintiffs point to the state appropriations for 1968.

The OAA program was allocated $48,162,898.76 for 229,654 recipients, while AFDC was allocated $6,149,427.73 for 138,942 recipients, more than 6 times the funds for less than twice the number of recipients.

"The plaintiffs contend that the difference in the appropriations for AFDC and the other groups is violative of the Equal Protection Clause because there is a larger percentage of Negroes and Mexicans in AFDC than in the other categories.

"Plaintiffs contend that in order to remove the discrimination between categories, recipients of AFDC should receive 95%-100% of unmet needs. They seek to have Section 51-a Article III of the Texas Constitution held unconstitutional because it sets a limit on the amount of funds that the Legislature may expend on the various welfare programs. However, if the provisions of Section 51-a were declared invalid, the entire program of welfare would be destroyed, since this section is the only authorization which the Legislature has to appropriate money for the needy. Should this authorization be declared invalid, then 51-a prohibits the Legislature from making any grant of public moneys to any individual. Apparently under this contention plaintiffs desire this Court to take over the responsibilities of the people to amend the Constitution and of the Legislature to allocate funds. This we do not intend to do.

"To remove the alleged discrimination, however, it would not be necessary to pay 100% of the unmet needs. It would be necessary only to balance the payments to meet like percentages of need throughout the various categories.

"We will therefore address ourselves merely to the question of whether there is discrimination between the various categories based on racial or ethnic prejudice. From an examination of the stipulations we have concluded that the plaintiffs have

failed to make a sufficient showing of racial or ethnic discrimination.

"We have based our conclusions on the following:

"1. There has never been a reduction in the amount of money appropriated by the Legislature to the AFDC program. (Stipulation No. 54).

"2. Since 1943 there have been five increases in the amount of money appropriated by the Legislature to the AB and AFDC programs and six increases in the OAA program. (Stipulation Nos. 48 and 49).

"3. Since 1959 there have been two increases in the amount of money appropriated by the Legislature to the AFDC program. (Stipulation No. 50).

"4. Since 1943 the appropriation by the Legislature to the OAA, AB and AFDC programs have increased by the following percentages:

OAA—211%
AB—200%
AFDC—410%
(Stipulation No. 51).

"5. Since 1963 the appropriation by the Legislature to the OAA, AB, AFDC and APTD programs have increased by the following percentages:

OAA—13%
AB—0
AFDC—58%
APTD—183%
(Stipulation No. 53).

"6. The majority of the AFDC families having their grant raised on May 1, 1969, were large families and the large family groups receiving AFDC assistance grants are predominately Negro and Mexican-American. (Stipulation Nos. 38 and 39).

"7. In January, 1969, the Legislature authorized the expenditure of an additional $350,000.00

in the AFDC program for the fiscal year ending August 31, 1969. (Stipulation No. 72).

"8. The Legislature has submitted a constitutional amendment to be voted on in August, 1969, which would authorize the Legislature to appropriate up to $80,000,000.00 for assistance grants in the OAA, AB, APTD and AFDC programs. If adopted, the present plan is to recommend to the Legislature an increase of $11,900,000.00 in the AFDC program which will then permit AFDC recipients to be paid 100% of unmet need. (Stipulation No. 75).

"9. Under the proposed plan for appropriations, if the amendment is adopted, the AFDC program would receive $11,900,000.00 of the $15,000,000.00 in additional funds available to operate the OAA, AB, APTD and AFDC programs. (Stipulation No. 76).

"10. Recipients in the AB program being paid 95% of need are 54.2% Negro and Mexican-American and 44.3% white-Anglo. (Stipulation Nos. 23 and 31).

"11. The depositions of Welfare officials conclusively establish that the defendants did not know the racial make-up of the various welfare assistance categories prior to or at the time when the orders here under attack were issued."

In addition to the foregoing undisputed and stipulated facts forming the basis of the decision of the court below upon Appellants' racial allegations, the Appellees would also call the Court's attention to the following Stipulations which further establish clearly the lack of racial motivation or effect in the allocation of funds between the various categories of welfare assistance by the Legislature of Texas:

"...

"52. In the past 26 years the appropriations by the Legislature of the State of Texas have been in-

creasing in the AFDC program at approximately twice the rate as in the OAA and AB programs." (App. 78).

"...

"56. That under Art. III, Sec. 51-a of the Texas Constitution, any increase in the amount of money presently being appropriated by the legislature of the State of Texas to the AFDC program would result in the amount of money available in the OAA, AB and APTD programs being reduced." (App. 79).

"...

"80. That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 117,933 Negro and Mexican-Americans in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated." (App. 84).

"81. That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 95,360 Negro and Mexican-Americans in the OAA, AB and APTD programs being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated." (App. 84).

"82. That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 61,968 Negroes in the AFDC program being increased, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated." (App. 85).

"83. That if the relief sought by the plaintiffs is granted it could result in the assistance grants of approximately 56,107 Negroes in the OAA, AB and

APTD programs being lowered, assuming the budgeting procedures as per E-430 and E-434 and the present operation of the welfare plan remain constant and remain the same as presently operated." (App. 85).

As can be seen from the foregoing stipulations, the Legislature of the State of Texas has been increasing the funds available in the AFDC program twice as fast in the last 26 years as in two of the three other programs. In fact, since 1969, as previously noted, the total amount of funds available in the AFDC program has increased by almost 400%.

In addition, the foregoing stipulations reveal that Appellants' theory of balancing the allocations between the various welfare categorical programs actually disprove the racial assertions of the Appellants. While under Appellants' theory 117,933 Negro and Mexican-Americans in the AFDC program would have their assistance grants raised (Stipulation No. 80), it would in turn lower the assistance grants of 95,360 Negro and Mexican-Americans in the OAA, AB and APTD programs (Stipulation No. 81). While under Appellants' theory 61,968 Negroes would have their assistance grants raised in the AFDC program (Stipulation No. 82), it would lower the assistance grants of 56,107 Negroes in the OAA, AB and APTD programs.

Under Appellants' theory what really would be happening on a racial basis, would be that approximately the same number of individuals in the AFDC program would be benefited as would be penalized in the OAA, AB and APTD programs.

What could more graphically reveal the lack of racial motivation or effect on the allocation of moneys by the Legislature of Texas between the welfare programs than the above undisputed and stipulated facts? Some

merit might be given to Appellants' argument of racial motivation or effect in the allocation of funds if their theory had demonstrated that an equal allocation between the programs would have resulted in a large benefit to racial or ethnic groups without any corresponding penalty. However, this is undisputedly not the case, and in fact it further establishes that the allocation of funds by the Legislature of Texas between the various categories of welfare programs is not racially discriminatory in either purpose or effect so as to make it inherently suspect.

Such being the case, the court was not only correct in refusing to sustain Appellants' equal protection and civil rights allegations, but was also correct in applying the traditional equal protection test rather than the "compelling interest test" in weighing the validity of regulations of the Appellees and the legislative enactments of the State of Texas.

In conclusion, it should be noted that Appellants have attempted to give the impression that the court below based its decision, that there had been a failure to make a showing of racial or ethnic discrimination, almost solely on the fact that the Appellees did not know the racial make-up of the welfare assistance categories prior to or at the time when the orders under attack were issued. (See in this connection the depositions of Hackney, p. 91; Sarazan, p. 54-55; Chapman, p. 52). If so suggesting, the Appellants no doubt are seeking to discredit the decision of the court below by trying to suggest that the court only took into consideration motivation or intent in its decision. The record before this Court, and the undisputed facts and stipulations quickly dispell this position, as they clearly show that the court below took into consideration effect as well as motivation and intent.

In view of the foregoing, Appellees submit that this Court should sustain the action of the court below in its decision that neither the regulations of the Appellees nor the enactments of the Legislature of the State of Texas, here challenged, violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States or the Civil Rights Act of 1964.

> "Whether the use by Texas of something other than the adjusted standard of need in determining eligibility for benefits pursuant to the AFDC program violates Section 402(a) (23) of the Social Security Act?"

Before proceeding with the argument upon Appellants' statutory claim that the method used by Texas in determining eligibility of welfare recipients is in conflict with 42 U.S.C. §602(a) (23), both the Appellants and this Court are faced with a threshold issue or question both serious and far-reaching in effect.

> "DOES THERE EXIST AN ACTUAL AND JUSTICIABLE CONTROVERSY BETWEEN THE APPELLANTS AND THE APPELLEES AS TO THE STATUTORY GROUNDS ASSERTED BY APPELLEES AND THUS DO APPELLANTS LACK THE NECESSARY STANDING?"

At no time during the trial of this case did the Appellants plead, prove or urge that the manner in which Appellees determined eligibility was in conflict with or violation of 42 U.S.C. §602(a) (23). Only after this proceeding had been appealed initially to this Court and the judgment vacated for further consideration in light of this Court's decision in *Rosado v. Wyman, supra,* and the court below had entered another judgment denying all of the relief sought by Appellants,

did the issue of the manner Appellees were determining eligibility raise its head, and then only by the way of the Appellants' motion to amend the judgment entered by the court below which is now the subject of this appeal.

However, none of the Appellants presently before this Court are affected by the manner in which Appellees are determining eligibility of those seeking welfare assistance. The Stipulations of Fact Nos. 3, 4, 5, 5a and 5b (App. 65-66) show that none of the Appellants before this Court have lost their eligibility for welfare assistance. The only party whose eligibility was terminated by Appellees' regulations here under attack was Maria T. Davila (Stipulation No. 1, App. 64), and on October 3, 1969, before the initial appeal of this case, this party, Maria T. Davila, along with another party, requested the court below to dismiss their appeal and this was done (Docket Entry, App. 13).

Consequently, the only party who has ever been in this litigation, whose eligibility was ever affected, was Maria T. Davila and she has not been a party to this proceeding since prior to the initial appeal in this case, and was not a party at the time Appellants first raised their statutory arguments based on the manner in which the Appellees determine eligibility and which is now being asserted before this Court.

Such being the case, the Appellees submit that there is no actual controversy between these Appellants or the class they represent and the Appellees upon the issue of whether the Appellees' method of determining eligibility conflicts with 42 U.S.C. §602(a) (23). Appellants are merely attempting to use this litigation as a vehicle to attempt to have this Court render an advisory opinion on an issue they would like to have re-

solved, but one which is not in controversy between the parties before this Court.

The reason for such an attempt is obvious. In the initial proceeding before the court below, the Appellants lost their equal protection argument, but prevailed in their statutory argument that the ratable reduction method Texas was using in making welfare assistance payments to recipients (paying only a percentage of the cost of living adjusted standard of need) was in conflict with 42 U.S.C. §602(a) (23), when the court below followed the logic of the dissenting opinion in *Lampton v. Bonin,* 304 F.Supp. 1384 (E.D. La. 1969), vacated and remanded for reconsideration in light of *Rosado v. Wyman,* 397 U.S. 663 (1970). However, the decision by this Court in *Rosado v. Wyman, supra,* sustained the type of ratable reduction method being used by Texas, and under attack by the Appellants, and this new type of statutory challenge was all that was left to Appellants in an attempt to salvage something from their statutory arguments.

This attempt to change horses in midstream might have been successful if the horseman had fit the saddle on the new horse, but this is where the Appellants encounter difficulty. None of the Appellants before this Court in this appeal fit the mold of the type of complainant needed to raise the statutory issue being raised. None of the Appellants have had their eligibility affected by the challenged regulations, and no decision this Court might make on the statutory question here presented will affect them in any way.

The decision by this Court in *Flast v. Cohen,* 392 U.S. 83, 20 L.Ed.2d 947, 88 S.Ct. 1942 (1968), is one of the most recent and extensive decisions examining this issue now once again before the Court. The following

statements from this Court's opinion are most revealing in view of the facts here presented:

"The jurisdiction of the federal courts is defined and limited by Article III of the Constitution. In terms relevant to the question for decision in this case, the judicial power of federal courts is constitutionally restricted to 'cases' and 'controversies.' ... Embodied in the words 'cases' and 'controversies' are two complementary but somewhat different limitations. In part those words limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process....

"Justiciability is itself a concept of uncertain meaning and scope. Its reach is illustrated by the various grounds upon which questions sought to be adjudicated in federal courts have been held not to be justiciable. Thus, no justiciable controversy is presented when the parties seek adjudication of only a political question, when the parties are asking for an advisory opinion, when the question sought to be adjudicated has been mooted by subsequent developments, and when there is no standing to maintain the action....

"... And it is quite clear that 'the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions.' C. Wright, Federal Courts 34 (1963). Thus, the implicit policies embodied in Article III, and not history alone, impose the rule against advisory opinions on federal courts.... However, the rule against advisory opinions also recognizes that such suits often 'are not pressed before the Court with that clear concreteness provided when a question emerges precisely framed and necessary for decision from a clash of adversary argument exploring every aspect of a multifaced situation embracing conflicting and demanding interests.' United States v. Fruehauf, 365 US

146, 157, 5 L Ed2d 476, 483, 81 S Ct 547 (1961). Consequently, the Article III prohibition against advisory opinions reflects the complementary constitutional considerations expressed by the justiciability doctrine: Federal judicial power is limited to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process.

"...

"... The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' Baker v. Carr, 369 US 186, 204, 7 L Ed2d 663, 82 S Ct 691 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable.... A proper party is demanded so that federal courts will not be asked to decide 'ill-defined controversies over constitutional issues,' United Public Workers v. Mitchell, 330 US 75, 90, 91 L Ed 754, 768, 67 S Ct 556 (1947), or a case which is of 'a hypothetical or abstract character,' Aetna Life Insurance Co. v. Haworth, 300 US 227, 240, 81 L Ed 617, 621, 57 S Ct 461, 108 ALR 1000 (1937)....

"... It is for that reason that the emphasis in standing problems is on whether the party invoking federal court jurisdiction has 'a personal stake in the outcome of the controversy,' Baker v. Carr, supra, at 204, 7 L Ed2d at 678, and whether the

dispute touches upon 'the legal relations of parties having adverse legal interests.' Aetna Life Insurance Co. v. Haworth, supra, at 240-241, 81 L Ed at 621, 108 ALR 100. . . ."

In view of the foregoing, the Appellees submit that this Court should not entertain Appellants' statutory issues because there does not exist the necessary standing on the part of the Appellants or an actual or justiciable controversy between the Appellants and Appellees. The Appellants are merely seeking an advisory opinion, and for this reason as well as the foregoing this Court lacks jurisdiction.

While the Appellees submit that the foregoing forecloses further consideration of Appellants' statutory arguments, the Appellees do wish to comment upon the statutory grounds asserted by Appellants.

As noted previously, Appellants' initial challenge to the regulations promulgated by Appellees dealt with the issue that 42 U.S.C. §602(a) (23) did not allow the State to employ ratable reductions to reduce welfare expenses within available funds. However, this Court's decision in *Rosado v. Wyman, supra,* was adverse to Appellants' initial contention, and this Court in *Jefferson v. Hackney,* 397 U.S. 821 (1970) (App. 158), vacated the decision of the court below in sustaining Appellants' statutory position because of the decision in *Rosado v. Wyman, supra.*

Having been blocked in their attempt to challenge the Texas regulations concerning the percentage of recognized need that would actually be paid eligible welfare recipients, the Appellants have now changed the thrust of their attack to the new issue of determining eligibility to receive welfare assistance grants—an issue not before this Court in *Rosado v. Wyman, supra.*

The Appellants now contend that the Texas method[1], of applying any attributable income to a ratably reduced standard of need rather than first applying income to need and then applying the ratable reduction to any remainder, violates 42 U.S.C. §602(a) (23).

In support of this contention that the Texas method of determining eligibility used in all categories of welfare assistance programs, violates 42 U.S.C. §602(a) (23), the Appellants have literally deluged the Court with legislative history, and a myriad of conjectures from every imaginable source. This form of authority may indeed be helpful and even persuasive to the Court when attempting to ascertain congressional intent when a statute is vague or indefinite in meaning. However, the Appellees submit that the provisions of 42 U.S.C. §602(a) (23) do not lend themself to the interpretation sought by Appellees. When Congress enacted the following language:

> "A State plan for aid and services to needy families with children must . . .
>
> "(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

the purpose and objective projects itself clearly from the language of the enactment. Congress was requiring the states to up their recognized standards of need to reflect the rising cost of living since the date the standards had originally been set. As this Court held in *Rosado v. Wyman, supra,* the purpose was not to man-

[1]Approved by HEW and used in 19 other states. Memorandum for the United States as Amicus Curiae.

datorily require the states to spend more money on their welfare programs—merely, to make the states recognize the rise in the cost of living and hopefully prod the states into increased monetary expenditures to offset the rising cost of living.

The Appellants would now have this Court read into the plain and simple language of this congressional enactment an entirely new subject both comprehensive and far-reaching in effect. Appellants seek to have this Court impute to Congress the intention to alter the eligibility requirements for receiving welfare assistance in a manner to further enlarge the welfare programs of the states—many of whom find their fiscal resources inadequate to presently handle existing programs.

A matter of such significance and impact does not normally find itself hidden so skillfully in congressional statutes as Appellants tend to suggest. Appellees submit that to indulge in the interpretation sought by the Appellants as to the provisions of 42 U.S.C. §602(a)(23) comes close to depriving Congress of its traditional and constitutional function of making the decision of whether eligibility requirements in the welfare programs are to be altered and if so, in what manner. Certainly, in a matter as significant and far-reaching as changes in eligibility in programs of the size and complexity as here being dealt with, the desire of Congress should speak clearly on the subject and not be expanded on the basis of mere speculation or conjecture. It seems vastly more reasonable to assume that had Congress sought to revamp eligibility standards in the AFDC program they would have used a much more direct approach rather than obscuring it in a statute dealing with another topic in the hopes that it might be discovered and acted upon.

The Appellants have also attempted to use some of the language of this Court in *Rosado v. Wyman, supra,* as authority that the states cannot use the ratably reduced standard of need in determining eligibility. This argument, however, ignores the fact that *Rosado v. Wyman, supra,* dealt not with eligibility but with the issue of whether a state could pay less than the adjusted standard of need.

While the Appellants seek to read into *Rosado v. Wyman* a virtual goldmine of ways to expand upon what the provisions of 42 U.S.C. §602(a) (23) actually provide, it might prove helpful to look once again at the language of this decision devoid of the interpretations sought by the Appellants:

> "There are two basic factors that enter into the determination of what AFDC benefits will be paid. First, it is necessary to establish a 'standard of need,' a yardstick for measuring who is eligible for public assistance. Second, it must be decided how much assistance will be given, that is, what 'level of benefits' will be paid. *On both scores Congress has always left to the States a great deal of discretion. King v. Smith,* 392 U.S., at 318.
>
> "...
>
> "Reverting to the language of §402(a) (23) we find two separate mandates; first, the States must re-evaluate the component factors that compose their need equation; and, second, any 'maximums' must be adjusted.
>
> "We think two broad purposes may be ascribed to §402(a) (23): First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis.

"...

"'The congressional purpose we discern does not render §402(a) (23) a meaningless exercise in 'bookkeeping.' Congress sometimes legislates by innuendo, making declarations of policy and indicating a preference while requiring measures that, though falling short of legislating its goals, serve as a nudge in the preferred directions. *In §402(a) (23) Congress has spoken in favor of increases in AFDC payments.* While Congress rejected the mandatory adjustment provision in the administration bill, it embodied in legislation the cost-of-living exercise which has both practical and political consequences.'' (Emphasis added.)

The interpretation of 42 U.S.C. §602(a) (23) which Appellants seek is a most unusual one when it is viewed realistically and in actual operation. *Rosado v. Wyman* does not require the states to expend more money in the operation of their welfare programs and recognizes that the states may pay in welfare grants an amount less than the adjusted standard of need consistent with the funds they have available. However, the Appellants seek to have the Court interpret 42 U.S.C. §602(a) (23) in such a manner as to require additional applicants to be placed upon the welfare rolls by altering eligibility standards being used. In the case of Texas, which has a fixed maximum that it can expend for its welfare programs, the effect is obvious. The percentage of the adjusted standard of need that is actually paid the recipient will have to be reduced. This result would hardly seem to be the one envisioned by Congress when it enacted 42 U.S.C. §602(a) (23). It also seems to be a somewhat strange posture for the Appellants to find themselves in—that of advocating a position which if sustained, can only result in the reduction of the assistance grants they now have.

Perhaps the irony of Appellants whole position is that it results in harming those welfare recipients who need assistance most. Perhaps the Appellants might do well to consider the statement made by this Court in its concluding statements in *Dandridge v. Williams, supra:*

> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, Goldberg v. Kelly, ante, p. 254. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Cf. Steward Mach. Co. v. Davis, 301 U.S. 548, 584-585; Helvering v. Davis, 301 U.S. 619, 644."

In conclusion, Appellees would like to commend the Solicitor General for its very studied and comprehensive Memorandum for the United States as Amicus Curiae. The Appellees agree with both the general reasoning and the conclusion reached by the Solicitor General therein.

In view of the foregoing, the Appellees submit that the Appellants have failed to show the presence of any actual controversy between themselves and Appellants upon the statutory issues here raised and therefore they are seeking nothing more than an advisory opinion which this Court should refrain from entertaining.

In addition, the Appellees submit that the court was correct in denying the Appellants the relief they sought upon the statutory issues raised and should be sustained.

CONCLUSION

This case can best be summarized as another of a virtual torrent of litigation, which is practically inundating the judicial system, and which seeks to challenge practically every legislative and administrative act of the states connected with welfare programs. While these suits of necessity must allege constitutional or statutory grounds as their basis, all too frequently, as here, these asserted constitutional and statutory grounds are nothing more than a vehicle upon which to bring before the courts an argument dealing not with pressing constitutional or statutory issues, but in reality a particular litigant's desire to have the legislative bodies of this country respond to a particular desire in a particular manner. This approach, however, should be pursued in the halls of Congress and the legislatures of the states—not before the courts. The notion that the United States Constitution empowers the federal courts to judge the wisdom of the means by which a state undertakes to further a legitimate interest has long been rejected by this Court. Federal courts are not empowered to sit as a "super-legislature to determine the wisdom, need, and propriety of laws." *Griswold v. Connecticut,* 381 U.S. 479, 482, 85 S.Ct. 1678, 14 L.Ed. 2d 510, 513 (1965); *Munn v. Illinois,* 94 U.S. 113, 24 L. Ed. 77 (1876). The United States Constitution does not give the federal courts the power to judge the wisdom of the legislative choice and turn the court's disagreement with that choice into a constitutional prohibition. *Beauharnias v. Illinois,* 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 919 (1952); *Ferguson v. Skrupa,* 372 U.S. 726,

83 S.Ct. 1028, 10 L.Ed.2d 93 (1963); *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 79 S.Ct. 985, 3 L.Ed.2d 1072 (1959); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 653 (1955).

In view of the foregoing Appellees submit that the judgment of the United States District Court for the Northern District of Texas, Dallas Division, entered on August 4, 1970, should be affirmed.

Respectfully submitted,

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SERVICE

I, Pat Bailey, one of the attorneys for the Appellees and a member of the Bar of the Supreme Court of the United States, hereby certify that on the —— day of January, 1972, I served a copy of the foregoing Brief of Appellees on the Appellants by depositing a copy in the United States Mail, postage prepaid, and addressed to the attorneys of record for Appellants as follows: Steven J. Cole and Henry A. Freedman, Center on Social Welfare Policy and Law, 401 West 117th Street, New York, New York 10027; Carl Rachlin, Hunter College, New York, New York 10021; Edward V. Sparer, University of Pennsylvania School of Law, 3400 Chestnut Street, Philadelphia, Pennsylvania 19104; and Ed J. Polk, 800 Main Street, Dallas, Texas 75202.

PAT BAILEY

IN THE

Supreme Court of the United States

Supreme Court, U.S.
FILED
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October Term, 1971
No. 70-5064

RUTH J. JEFFERSON, *et al.*,

Appellants,

vs.

BURTON G. HACKNEY, *et al.*,

Appellees.

On Appeal From the United States District Court for the Northern District of Texas.

Brief of the State of California Amicus Curiae in Support of Appellees.

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Interest of the State of California.

On December 6, 1971, the California Supreme Court decided the case of *Villa v. Hall,* judicially directing that the California State Department of Social Welfare could compute welfare grants *only* by deducting non-exempt outside income directly from the unadjusted standard of need. A copy of that opinion is attached hereto as Appendix A. A petition for rehearing was filed by respondents (Hall, state welfare officials), and denied January 5, 1972. Respondents plan to appeal to this Court since the California Supreme Court held that California's welfare payment plan was contrary to this Court's decision in *Rosado v. Wyman,* 397 U.S. 397 (1970), and the Social Security Act.

The sole issue in *Villa v. Hall* is the method of computing welfare grants at a level lower than the standard of need. The method used in California varies only slightly, if at all, from that used in Texas. The issue in this case is essentially the same as that in *Villa v. Hall,* to wit, the extent of a state's ability to control its welfare policies and expenditures in light of limited resources.

The State of California enters this case as amicus curiae urging affirmance in support of the argument and position of Texas, to the end that the states might reserve to themselves the making of some of the decisions as to how to apportion limited monies among needy citizens.

California's Payment Plan.

California has a state-supervised county-administered Aid to Families With Dependent Children program federally assisted pursuant to provisions of the Social Security Act. Eligibility for participation is based on a standard of need. The standard of need, recently revised upward, is found in California Welfare and Institutions Code section 11452, as amended by the Welfare Reform Act of 1971, Cal. Stats. of 1971, chapter 578, section 28.5. (Attached hereto as Appendix B.) *All of those considered needy according to the measure of the standard of need are included in the program.* This is so, even though the Welfare Reform Act of 1971 provides that some families only marginally needy receive a zero cash grant. Those marginally needy families entitled to a zero cash grant receive all other program benefits, including medicare, food stamps, social services, grants and/or services pertaining to recurring and non-recurring special needs, and

eligibility for vocational training and other benefits related to the WIN (work incentive) program.[1]

Computations of cash grants or money payments on the other hand are accomplished according to a separate formula. After determining need and eligibility, resort is had to a table indicating the maximum extent to which the state will participate in fulfilling unmet needs by way of a cash grant. This table, recently revised upward, is found in Welfare and Institutions Code section 11450(a), as amended by the Welfare Reform Act of 1971, Cal. Stats. of 1971, chapter 578, section 28 (attached hereto in pertinent part as Appendix C.)[2] It provides for maximum cash assistance by the state ranging from 92.2 to 84.7 percent of the standard of need. *Both* the standard of need and the table of "maximums" are keyed to the cost of living and therefore to each other. They fluctuate with the cost of living, and thus the system operates in the same manner as a ratably reduced standard of need such as used by Texas and other states. (*See* Welf. & Inst. Code § 11453, added by the Welfare Reform Act of 1971, Cal. Stats. 1971, ch. 578, § 29.1, attached hereto in pertinent part as Appendix D.)

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[1]The California Supreme Court based its decision in *Villa v. Hall* in large part on the erroneous assumption that many families, although marginally needy by measure of the standard of need and entitled to a zero cash grant, would be deemed ineligible for inclusion in the program. *See* Appendix A, pp. 9-11. This mistaken assumption was the chief basis for the petition for rehearing, and will be one of the bases upon which review in this Court will be sought.

[2]This section is the subject matter of *Villa v. Hall.* At this writing, it cannot be determined in precisely what manner, if at all, it will be implemented in the immediate future. However, it represents the expressed intentions of the California Legislature which it is hoped will be sustained by the courts.

It is from this figure (Table in Appendix C) that non-exempt[3] outside income is deducted in computing the cash grant (as opposed to eligibility for inclusion in the overall program).

California's method of grant computation precisely is the same as the Texas method now before this Court with two possible differences, one purely technical, the other potentially meaningful.

Texas deducts non-exempt outside income from a figure uniformly pegged at 75 percent of the standard of need. The resulting figures are nowhere set forth in a table corresponding to the standard of need. California deducts income from a table which represents 84.7 to 92.2 percent of the standard of need. This difference is purely technical. The fact that Texas has not set forth its reduced standard of need in a table broken down by family size makes no practical difference in the application of the grant computation method.

In California, the fact that the use of the above described method of payment computation may result in a zero cash grant for some marginally needy families *in no way affects the initial and continuing eligibility of those families for inclusion in the overall benefits of the Aid to Families With Dependent Children program.* It is not clear to California at the time of this writing whether or not the same is true in Texas.

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[3]Disregard of *exempt* income under section 402(a)(8) of the Social Security Act is the work incentive of $30 plus one-third of the balance of the earned income plus work related expenses.

ARGUMENT.

California and Other States Will Never Be Able to More Equitably Apportion Limited Welfare Resources in Favor of the Most Needy Recipients Unless the Decision Below Is Affirmed.

Section 402(a)(23) of the Social Security Act requires "that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes * * * will have been proportionally adjusted."

In *Rosado v. Wyman*, 397 U.S. 397 (1970), this Court characterized section 402(a)(23) as having "the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the case and training provisions." [397 U.S. at 413.]

If this is a binding construction of section 402(a)(23), California has complied by including *all* families newly eligible by the measure of its raised standard of need in every aspect of the Aid to Families With Dependent Children program related to care and training, no matter now small their unmet needs.

However, another purpose of section 402(a)(23) recognized by this Court in *Rosado* was "to prod the states to apportion their payments on a more equitable basis." *Ibid.* States were also encouraged to abandon maximums in favor of ratable reductions by the device of *requiring an upward adjustment* of maximums while *allowing a decrease* in expenditures by adjustment of the ratably reduced percentage of the standard of need.

Id. at 413-14. California did not choose to abandon its statutory table of maximum assistance but rather raised it substantially. Section 28 of the Welfare Reform Act has the effect of *increasing* grants to about 80 percent of its recipients.[4]

California's proposed Welfare Reform Act is an excellent example of a state apportioning its welfare payments on a more equitable basis. The schedules (Appendices B and C) are constructed in such a way that total expenditures for the program remain constant. The most needy majority of recipients receive increased grants, and new marginally needy families are included in the care and training provisions of the program. To defray the increased cost of these features, the minority of recipients with the smallest unmet needs (by virtue of substantial non-exempt outside income) are retained in the care and training aspects of the program, but receive reduced cash grants.

California, like Texas and most other states, is faced with a total demand for welfare payments that its overburdened fiscal resources prevent it from meeting in full. The states are clearly not obligated to pay full needs. *Rosado v. Wyman, supra,* 397 U.S. at 413; *Dandridge v. Williams,* 397 U.S. 471, 478-79 (1970). If full individual payments are *precluded by maximums or insufficient funds,* adjustments may be made according to a state-wide formula. 45 C.F.R. §233.20(a)(3)(viii). Texas' plan for calculating cash grants, like that of California, has the advantage of allocating the largest portion of those resources to those who need assistance most.

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[4]All recipients with no outside income, and all those with outside income less than the difference between the standard of need and the maximum would receive increased payments.

If the decision below is reversed, it may not be possible for California to ever give increased aid to the *most* needy of her citizens without also giving increased aid to the *least* needy. In light of fiscal and budgetary realities, neither California nor any other state may, under that circumstance, be able to increase aid to their truly destitute.

Conclusion.

The recognizable inequities in public assistance will not be remedied but exacerbated by this Court's reversal of the decision below. The executive and legislative branches of the federal and state governments are studying these problems. Judicial interference at this point will serve only to confuse rather than clarify the traditional responsibility of the legislative branch of the government. Surely if the "separation of powers" doctrine has any meaning the state and federal legislatures should be unimpeded in their search for equitable solutions realistically gauged to the fiscal resources available to accomplish this end.

For the foregoing reasons the State of California adopts and joins in the argument of the State of Texas for the affirmance of the decision of the three judge trial court.

Respectfully submitted,

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APPENDIX A.

Opinion of the Supreme Court of the State of California.

In the Supreme Court of the State of California, in Bank.

Virginia Villa et al., Petitioners, v. James M. Hall, as Secretary, etc., et al., Respondents. Sac. 7907.

Filed: Dec. 6, 1971.

Petitioners in this class action seek to invalidate a portion of section 28 of the California Welfare Reform Act of 1971 (Stats. 1971, ch. 578) on the ground it is incompatible with the federal Social Security Act. Because the unimpaired operation of the welfare program is of utmost significance to all the people of this state (see Welf. & Inst. Code, § 10000)[1] and because these petitioners would be affected drastically by the delays of protracted litigation, the matter is appropriate for the exercise of our original jurisdiction. (Mooney v. Pickett (1971) 4 Cal.3d 669, 675, and cases cited.)

Petitioners represent a class of individuals receiving aid under the state's Aid to Families with Dependent Children (AFDC) program. (Welf. & Inst. Code, §§ 11200-11489.) AFDC is one of four major categorical assistance programs established by the Social

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[1]Welfare and Institutions Code section 10000 provides that the statutory purpose is to "provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, and without discrimination on account of race, national origin or ancestry, religion, or political affiliation; and that aid shall be so administered and services so provided as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society."

Security Act of 1935.[2] The program is based on the concept of "co-operative federalism," in that it is financed largely by the federal government on a matching-funds basis but is administered by the individual states. States are not required to participate in the program, but those which desire to take advantage of the substantial federal resources available must submit an AFDC plan for approval by the Secretary of the Department of Health, Education and Welfare (HEW) (42 U.S.C. §§ 601-604), and the state plan must conform with the requirements of the Social Security Act and applicable HEW regulations. (King v. Smith (1968) 392 U.S. 309, 316-317.)

While the states are accorded significant discretion as to the details of their individual programs, there are two factors which under federal law must enter into the determination of benefits to be paid. First, standards of need must be established, i.e., a yardstick for ascertaining who is eligible for public assistance. Second, states must then decide how much assistance will in fact be given. (Rosado v. Wyman (1970) 397 U.S. 397, 408; King v. Smith, supra, at pp. 318-319.)

The provisions of California's AFDC program corresponding to the two factors identified in *Rosado* and *King* are found in sections 11450 and 11452 of the Welfare and Institutions Code. Section 11452 establishes "minimum basic standards of adequate care," i.e., standards of need. Such standards are designed to in-

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[2]The four major programs are Old Age Assistance (42 U.S.C. § 301 et seq.); Aid to Families with Dependent Children (42 U.S.C. § 601 et seq.); Aid to the Blind (42 U.S.C. § 1201 et seq.); and Aid for the Permanently and Totally Disabled (42 U.S.C. § 1351 et seq.).

sure safe and healthful housing; minimum clothing for health and decency; adequate food; utilities; certain household, personal, and miscellaneous needs; and essential medical and dental care not otherwise provided by the public. A monetary schedule for these standards of need was, until the Welfare Reform Act of 1971, contained in regulations promulgated by the State Department of Social Welfare. (State Department of Social Welfare, Manual of Policies and Procedures: Eligibility and Assistance Standards, § 44-212.) Under the new act, the amounts are set forth in the Welfare and Institutions Code (Welf. & Inst. Code, § 11452, as amended by Stats. 1971, ch. 578, § 28.5.)

It is well settled, however, that the states are not required to pay full needs: individual needs may be made subject to the statewide application of either a percentage figure (i.e., a "ratable reduction") or a flat statutory maximum. California has chosen the latter method and has established such maximums in section 11450 of the code. Thus under section 11452 as amended a family of two needs $210 a month to secure adequate care, but the amount of aid that will actually be paid is limited to $190 by the statutory maximum provided in section 11450; corresponding figures for a family of three are $255 and $235; of four, $314 and $280; of five, $362 and $320; et cetera.

Prior to the enactment of the Welfare Reform Act, any outside income earned by the recipient and not exempted[3] was deducted from the standard of need to determine the actual requirements of the individual re-

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[3]See Social Security Act, sections 402, subdivision (a)(7), 402, subdivision (a)(8) (42 U.S.C. §§ 602, subd. (a)(7), 602, subd. (a)(8)); County of Alameda v. Carleson (1971) 5 Cal. 3d 730.

cipient.[4] The new law, however, provides that income be subtracted not from the standard of need but from the lower statutory maximum.[5] Petitioners contend that the Social Security Act compels income to be deducted from the standard of need and not from the statutory maximum, and hence the new California statute is to that extent incompatible with federal law.

Any analysis of federal law requirements necessarily must begin with the Social Security Act itself. In section 402, subdivision (a)(7), Congress has specifically recognized that the income of a recipient relates to his or her need. "[T]he State agency shall, *in determining need*, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . ." (Italics added; 42 U.S.C. § 602, subd. (a)(7).)

The rationale of this statutory provision appears eminently sound. The first stage in the two-step process identified by hte Supreme Court in Rosado v. Wyman, supra, is to ascertain the general minimum needs of the community. Naturally, those in otherwise equiva-

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[4]Prior to the new law, section 11450, subdivision (a), read in part: "For each needy family which includes one or more needy children qualified for aid . . ., there shall be paid the sums specified in the following table, or so much thereof as is necessary for the adequate care of the needy family. . . ."

Pursuant to that statute the Department of Social Welfare issued Eligibility and Assistance Standard section 44-315.51, which provides in part: "[T]he budget deficit is determined by . . . [s]ubtracting the rounded current income from the rounded total need. The amount of the AFDC monthly payment is the budget deficit, or the [statutory maximum], whichever is less."

[5]"[T]here shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid each month which when added to his income . . . is equal to the sums specified in the [statutory maximum] table . . ." (Welf. & Inst. Code, § 11450, as amended by Stats. 1971, ch. 578, § 28.)

lent categories will require greater or lesser aid depending on the amount of income, if any, which they earn. If state budgets were designed so that 100 percent of need were paid to those on the AFDC program, there would be no dispute before us: clearly income would be subtracted from the statewide standard in order to ascertain an individual's actual need, and that amount would be paid.[6] However, Congress chose not to rigidly require the states to pay full need, and the Social Security Act specifically recognizes the validity of statutory maximums. (See 42 U.S.C. §602, subd. (a)(23).) Nevertheless, this recognition does not alter the fundamental concept, as exemplified by section 402, subdivision (a)(7), that income of a recipient relates to his or her *need*,[7] not to a designed *statutory maximum* the only support for which is found in budgetary limitations.[8]

Published HEW interpretations of section 402, subdivision (a)(7), moreover, bolster the conclusion that

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[6]As of July 1971, HEW figures indicate that 14 states were paying 100 percent of the standard of need to those without income or 100 percent of the deficit (standard of need less income) to those with income. (See "Summary of Payment Methods", July 1971, attachment to amicus curiae brief of HEW, Whitfield v. King (M.D. Ala.) Civ. No. 3330-N.)

[7]HEW regulations stress that it is income or resources *actually* available to the recipient that is determinative. (45 C.F.R. § 233.20, subd. (a)(3)(ii)(c).) The emphasis appears to require the state to ascertain the amount of aid the recipient in fact needs for adequate care by subtracting income and/or resources actually, not supposedly, received, from the standard of need. Thus child support due, but not actually received, is not considered income for this purpose.

[8]Another provision of the federal act (42 U.S.C. § 602, subd. (a)(8)) compels the conclusion that income is to be subtracted from need rather than from the statutory maximum. The provision allows a recipient to disregard a certain portion of his or her income in determining actual need. However, this "disregard"

(This footnote is continued on next page)

income is to be related to need: "Provision must be made that in arriving at the amount of assistance needed, the State will compare all income and resources found to be available to the individual for his use in meeting his current needs with the amount arrived at through the application of the State-wide standard." (Fed. Handbook of Pub. Asst., pt. IV, § 3120.)

Respondents contend that the current HEW attitude on the role of outside income in the computation of AFDC payments is indicated in the amicus brief the agency submitted to the United States Supreme Court in Jefferson v. Hackney, No. 6553, Oct. Term 1970.[9] There HEW takes the position that a Texas plan which subtracts income from a ratably reduced standard (not a statutory maximum) rather than from the full standard of need does not conflict with federal requirements. HEW's position in Jefferson is not controlling here for two reasons, in addition to the prevailing rule of administrative law that the ultimate authority of statutory interpretation rests in the judiciary. (Volkswagenwerk, etc. v. FMC (1968) 390 U.S. 261, 272; 1 Davis, Administrative Law (1958) § 506, pp. 326-327.)

First, the complaint in *Jefferson* was based on section 402, subdivision (a)(23), of the act, whereas the current challenge is founded in part on section 402, subdivision (a)(7). The former provision requires states to increase their standards of need and any statutory maximums to reflect cost of living rises; it makes no refer-

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provision is generally not available to those persons whose total income exceeds their *need*, not merely the statutory maximum. (See County of Alameda v. Carleson (1971) 5 Cal.3d 730, 739.)

[9]As of this writing, the case has not been decided by the Supreme Court. However, the point made by respondents is not the ultimate result but the HEW position.

ence to the use of income in the determination of payments. Because the court in Rosado v. Wyman, supra, narrowly viewed the Social Security Amendments of 1967, adding section 402, subdivision (a)(23), as not requiring an overall increase in benefit levels, HEW might reasonably conclude that section *alone* does not prohibit any decreases in aid occasioned by subtracting income from a ratable reduction rather than the standard of need.[10]

Second, *Jefferson* involves ratable reductions rather than statutory maximums, Both the Social Security Act (see 42 U.S.C. § 602, subd. (a)(23)) and the United States Supreme Court in *Rosado* make crucial distinctions between maximums and ratable reductions. The former is disfavored; the latter preferred. After *Rosado,* states could effectuate downward adjustments in welfare payments only by means of ratable reductions; they could not achieve the same result by decreasing applicable statutory maximums. (397 U.S. at pp. 413-414.) *Rosado* emphasized that one of the aims of the 1967 amendment was to encourage the

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[10]The New York statute under scrutiny in *Rosado* replaced an individualized computation of a recipient's standard of need with a scheme based, in part, on a flat allowance for certain needs according to average age. The high court held the new law inconsistent with section 402, subdivision (a)(23), which, it said, "invalidates any state program that substantially alters the content of the standard of need in such a way that it is less than it was prior to the enactment of § 402(a)(23), unless a state can demonstrate that the items formerly included no longer constituted part of the reality of existence for the majority of welfare recipients." (397 U.S. at p. 419.) The vice of the new statute was not necessarily that it provided for the averaging of certain needs but that "special grants" were eliminated from the computation of the need standard without a showing that such grant no longer represented a part of "the reality of existence" for the recipients. (*Id.*)

states to adopt ratable reduction plans. (*Id.*)[11] Thus, in light of the different treatment afforded statutory maximums and ratable reductions, it does not necessarily follow from HEW's position in *Jefferson* (i.e., to allow income to be subtracted from ratable reductions) that income may also be deducted from statutory maximums.[12]

More significantly, language in *Rosado* directly conflicts with the HEW position in *Jefferson* and thus creates considerable doubt as to the tenability of respondents' reliance on that HEW position. In defining ratable reduction the court in *Rosado* said: "A 'ratable reduction' represents a fixed percentage of the standard of need that will be paid to all recipients. In the event that there is some income which is *first deducted*, the ratable reduction is applied to the amount by which an individual or family falls short of need." (Italics added) 397 U.S. at p. 409, fn. 13.)

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[11]The advantage of a single ratable reduction which applies to all welfare recipients regardless of their specific needs, is that all recipients receive the same percentage of their need. Comparing the standard of need table in the Welfare Reform Act with the act's statutory maximum table shows that, before income is subtracted, a family of three needy persons will receive 92.2 percent of the minimum required for its care while a family with 10 or more will receive only 84.7 percent. (Welf. & Inst. Code, §§ 11450, 11452, as amended.)

[12]Of equal significance is the fact that subtracting income from ratable reductions does not violate another principle of *Rosado*, namely, that the states may not obscure the standard of need. (397 U.S. at p. 413.) Under the Texas plan challenged in *Jefferson*, the standard of need remains crucial because it is to that figure which the percentage is applied. Increasing the standard of need increases the amount of aid received, assuming the ratable reduction percentage is not lowered. Even though income is subtracted from the reduced figure, the standard of need continues to be relevant. Subtracting income from the statutory maximum relegates the standard of need to a virtually irrelevant position: it does not serve as the basis for determining

Both HEW in *Jefferson* and respondents here characterize the quoted statement of the Supreme Court as dictum. Closer analysis, however, reveals that this description of the mechanics of the ratable reduction procedure was necessary to the court's interpretation of the 1967 amendment which requires standards of need and statutory maximums to be increased to reflect cost of living rises. The petitioner in *Rosado* argued that the amendment compels an increase in the level of benefits actually paid. The court rejected that contention, and said that subsequent to the amendment the states could nevertheless reduce the amount of aid by lowering the ratable reduction percentage or by changing from a statutory maximum to a relatively low ratable reduction; only maximums could not be lowered. The court stated, however, that its conclusion did not render the amendment "a meaningless exercise in 'bookkeeping.'" (397 U.S. at p. 413.) Instead, it discerned two congressional purposes from the new provision, one of which was: "It has the effect of requiring the States to recognize and accept responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions." (*Id.*)

Thus, as long as the standards of need were increased, additional individuals would be included in the program, notwithstanding the fact that payments might be reduced pursuant to lower ratable reduction percentages. However, the court also recognized in its footnote 13 that an increase in the number of recipients could be assured

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actual need of a recipient, or any other meaningful purpose. As long as the maximum remains constant, increases in the standard of need would not affect the amount of benefits paid.

only if income was to be subtracted from the standard of need before the ratable reduction was applied. At least according to the interpretation in *Rosado*, the 1967 amendment was not concerned with the level of benefits paid to the truly destitute, those without outside resources. The court therefore refused to require an increase in benefits; instead, it concluded that the intent of the amendment was to reach an additional group of recipients, all of whom had outside income or resources.

The following hypothetical example demonstrates that by subtracting income from a ratably reduced figure or from a statutory maximum, a state could successfully avoid the court's interpretation that the amendment was designed to increase the number of people eligible for aid: Assume that prior to the 1967 amendment the standard of need for a family of two was $200 and the statutory maximum was $170 (or the ratable reduction for all need levels was 85 percent). The amendment mandated the states to increase both the standard of need and the statutory maximum. Thus, at the very least, families of two with outside income of $201 per month would accordingly become eligible for aid. Assume, pursuant to the amendment, that the standard of need was increased to $250 and the statutory maximum to $200 (or that the state changed its ratable reduction to 80 percent). Under California practice prior to the Welfare Reform Act an individual with outside income of

$201 would have an actual need of $49 ($250 less $201) which would be paid in full because it was less than the applicable maximum ($200). Under the procedure adopted by the Welfare Reform Act, however, an individual earning $201 would still be ineligible because when the outside income ($201) is subtracted from the statutory maximum ($200), no "actual need" remains.

Thus, a state could completely avoid the *Rosado* interpretation of section 402, subdivision (a)(23), by raising its post-amendment maximum only to the level of its pre-amendment standard of need or by decreasing its ratable reduction accordingly, and then subtracting income from the lower figure. Such a scheme is inconsistent with the result the *Rosado* court said Congress sought to achieve and would indeed render the amendment a "meaningless exercise in bookkeeping." In order to insure the effectuation of the end desired by Congress, the court concluded in its footnote 13 that income must be deducted from the standard of need and not from the ratably reduced figure (or likewise a statutory maximum).[13]

The conclusion that the Social Security Act requires outside income to be subtracted from standards of

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[13]The court's conclusion in *Rosado* was founded on section 402, subdivision (a)(23) of the act. Much of the discussion by petitioners and respondents here has focused on section 402, subdivision (a) (7). Our decision, however, is based on both sections, on the holding in Rosado v. Wyman, supra, on section

(This footnote is continued on next page)

need rather than from statutory maximums or ratable reductions is also founded on a strong public policy of encouraging welfare recipients to become constantly more self-supporting. Yet deducting income from statutory maximums makes gainful employment significantly less attractive to the recipient. This follows because all nonexempt income will be offset directly against the amount of the grant and not against the standard of need to determine actual need; for every nonexempt dollar earned, the amount of aid will therefore be decreased one dollar. Since the grant is always less than the standard of need, in many instances the system adopted by the Welfare Reform Act will result in an individual's need not being met even after adding both exempt and nonexempt income to the AFDC payment. Such recipients will be forced to exist below the bare minimum necessary for adequate care, even though they have commenced, by obtaining employment, to break free from the debilitating "welfare syndrome." The practice thus conflicts with the stated federal policy to provide incentives to obtain and maintain an employment status. (See 1967 U.S. Code Cong. & Admin. News, pp. 2994-2995; County of Alameda v. Carleson (1971) supra, 5 Cal.3d 730, 741-742.)

We conclude that section 11450, as amended by section 28 of the Welfare Reform Act, is inconsistent

402, subdivision (a)(8), and on considerations of employment incentive. Thus we disagree with the position of HEW, expressed in its amicus brief filed in Whitfield v. King (M.D. Ala.) supra, Civ. No. 3330-N, that section 402, subdivision (a)(7), does not, at least in part, compel the result we reach today.

with the Social Security Act insofar as it requires income to be deducted from statutory maximums and not from standards of need.[14] While manifestly the states are not required to participate in the federal AFDC program, as long as they accept federal funds for this purpose they must comply with federal law in the administration of their programs. (King v. Smith, supra; Rosado v. Wyman, supra; County of Alameda v. Carleson (1971) supra, 5 Cal.3d at p. 739.) The acceptance of federal funds pursuant to a state program not in compliance with the Social Security Act and the regulations promulgated thereunder would violate federal law in an area in which it is supreme. (U.S. Const., art. VI, § 2; see Rosado v. Wyman (1970) supra, 397 U.S. 397, 428 (Douglas, J., concurring) ["The wrong alleged is the State's failure to comply with federal requirements in its use of federal funds, not HEW's failure to withhold funds from the State."].)

We thus turn to the remedy to be afforded petitioners. In re Bell (1942) 19 Cal.2d 488, 498, declared that California law requires an unconstitutional portion of a statute be severed and "the remainder [to] stand if it is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute." (Cf. In re Blaney (1947) 30 Cal.2d 643, 655.) We need not

[14]We do not reach petitioners' contention that section 11450 as amended denies aid to a number of eligible recipients whereas federal law requires some amount of aid to *all* those eligible. (But see Dandridge v. Williams (1970) 397 U.S. 471, 481.)

speculate as to what action the Legislature might have taken had it foreseen the decision which we reach today. In section 41 of the new law the Legislature has expressly provided for severance "if any provision of this act . . . is held invalid." (Stats. 1971, ch. 578, § 41.)

In *Bell* we undertook to sever one section of a county anti-picketing ordinance and several words from another section. (19 Cal.2d at p. 497-498.) Section 11450 of the Welfare and Institutions Code is likewise "mechanically severable" within the meaning of *Bell* so that it conforms to federal law. This can be accomplished as an administrative matter without affecting the other policy determinations made by the Legislature in its amendments to section 11450 by deleting the following provision from subdivision (a) of that section: "when added to his income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (d) of this section or Section 11453.1, . . ."

In view of our interpretation of the mandate of federal law, section 11450, subdivision (a), with the foregoing deletion, can readily be interpreted as requiring income to be subtracted from an individual's standard of need; the statutory maximum becomes relevant only after that mathematical process is completed. If, however, the exact formula for determining aid to those with outside income needs clarification in addition to that contained in section 11450 as interpreted herein, respondent Carleson is directed to issue regulations pursuant to his statutory authority under Welfare and Insti-

tutions Code section 10600 in order to secure full compliance with federal law.[15]

Our order of September 30, 1971, stayed the operation of section 28 of the Welfare Reform Act insofar as it amended section 11450, subdivision (a). Prior to that order section 28 was to become operative on October 1, 1971, the date on which the remainder of the act went into effect. By invalidating only a portion of section 28, we gave deference to the legislative determination, evidenced by section 41 of the act, that valid provisions of the act should be unaffected by any invalid provisions.

With this legislative mandate in mind, we accordingly hold that the adjusted payments to be made pursuant to section 28, as interpreted herein, shall be retroactive to October 1, 1971. This conclusion fully effectuates the severance policy embodied in section 41, since the entire act will then be operative from October 1 with the exception of the provision which we have severed here. Respondent Carleson should therefore forthwith adopt a plan pursuant to which those who received improper payments on and after October 1 will be paid the adjusted amount to which we now hold they are entitled. (Cf. Welf. & Inst. Code,

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[15]Section 10600 provides: "It is hereby declared that provision for public social services in this code is a matter of statewide concern. The department is hereby designated as the single state agency with full power to supervise every phase of the administration of the public social services for which grants-in-aid are received from the United States government or made by the state in order to secure full compliance with the applicable provisions of state and federal laws." (See also §§ 10604, 10606.)

§ 11004, subd. (g), as amended by Stats. 1971, ch. 578, § 20.3.)

Our order staying operation of section 28 is vacated. Let a peremptory writ of mandate issue as prayed.

MOSK, *J.*

WE CONCUR:

WRIGHT, *C. J.*
McCOMB, *J.*
PETERS, *J.*
TOBRINER, *J.*
BURKE, *J.*
SULLIVAN, *J.*

APPENDIX B.

Sec. 28.5. Section 11452 of the Welfare and Institutions Code is amended to read:

11452. Minimum basic standards of adequate care shall be distributed to the counties and shall be binding upon them. Such standards are hereby determined on the basis of the schedule set forth in this section, as adjusted for cost-of-living increases or decreases pursuant to Section 11453, which schedule is designed to insure:

(1) Safe, healthful housing.

(2) Minimum clothing for health and decency.

(3) Low-cost adequate food budget meeting recommended dietary allowances of the National Research Council.

(4) Utilities.

(5) Other items including household operation, education and incidentals, recreation, personal needs, and insurance.

(6) Allowance for essential medical, dental, or other remedial care to the extent not otherwise provided at public expense.

(7) Other recurring special needs.

The schedule of minimum basic standards of adequate care is as follows:

Number of needy persons in the same family	Minimum basic standards of adequate care
1	$125
2	210
3	255
4	314
5	362
6	408
7	449
8	496
9	543
10	590

plus five dollars ($5) for each additional needy person.

The department shall establish rules and regulations assuring the uniform application statewide of the provisions of this section.

APPENDIX C.

Sec. 28. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) For each needy family which includes one or more needy children qualified for aid under this chapter, except as provided in Section 11403, there shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid each month which when added to his income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (d) of this section or Section 11453.1, is equal to the sums specified in the following table, as adjusted for cost-of-living increases or decreases pursuant to Section 11453:

Number of eligible needy persons in the same home	Maximum aid
1	$115
2	190
3	235
4	280
5	320
6	360
7	395
8	430
9	465
10 or more	500

. . . . .

APPENDIX D.

Sec. 29.1. Section 11453 is added to the Welfare and Institution Code, to read:

11453. The amounts set forth in Section 11452 and subdivision (a) of Section 11450 shall be adjusted annually by the department to reflect any increases or decreases in the cost of living occurring after April 1, 1972, so that the first such adjustment becomes effective July 1, 1973. The average of the separate indices of the cost of living for Los Angeles and San Francisco, as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. . . .

OPINION

Syllabus

JEFFERSON ET AL. v. HACKNEY, COMMISSIONER OF PUBLIC WELFARE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

No. 70-5064. Argued February 22, 1972—Decided May 30, 1972

Appellants, recipients of Aid to Families With Dependent Children (AFDC), challenge the system whereby Texas, in order to allocate its fixed pool of welfare money among persons with acknowledged need, applies a percentage reduction factor to arrive at a reduced standard of need, the factor being lower for AFDC than for other categorical assistance programs. Appellants assert that the State's method of applying this factor to recipients with outside income contravenes § 402 (a)(23) of the Social Security Act, which required adjustment, by July 1, 1969, of "amounts used . . . to determine the needs of individuals" to reflect increases in living costs, because this method does not increase the welfare rolls to the same extent as would an alternative procedure used by some other States. They also make an equal protection claim on the grounds that the distinction between the aid programs is not rational and that the Texas system racially discriminates against the proportionately larger number of minority groups in AFDC than in the other programs. *Held:*

1. The Texas scheme does not contravene § 402 (a)(23) of the Social Security Act, which does not require use of a computation procedure that maximizes individual eligibility for subsidiary benefits. Pp. 539–545.

2. The challenged system does not violate the Equal Protection Clause of the Fourteenth Amendment. Pp. 545–551.

(a) The fact that there are more members of minority groups in the AFDC program than in other categories does not indicate racial discrimination, absent any proof of racial motivation in the Texas scheme. There was no such proof here. Pp. 547–549.

(b) Texas' decision to provide somewhat lower welfare benefits for AFDC recipients than for the aged and infirm who are in other categories is not invidious or irrational, and there is no constitutional or statutory requirement that relief categories be treated exactly alike. Pp. 549–551.

Affirmed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, BLACKMUN, and POWELL, JJ., joined. STEWART, J., filed a statement joining in Part III of the Court's opinion, *post*, p. 551. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN, J., joined, *post*, p. 551. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, J., joined, and in Part I of which STEWART, J., joined, *post*, p. 558.

Steven J. Cole argued the cause for appellants. With him on the briefs were *Henry A. Freedman*, *Ed J. Polk*, *Edward V. Sparer*, and *Carl Rachlin*.

Pat Bailey, Assistant Attorney General of Texas, argued the cause for appellees. With him on the brief were *Crawford C. Martin*, Attorney General, *Nola White*, First Assistant Attorney General, *Alfred Walker*, Executive Assistant Attorney General, and *J. C. Davis*, Assistant Attorney General.

Evelle J. Younger, Attorney General, and *Elizabeth Palmer* and *Jerold A. Prod*, Deputy Attorneys General, filed a brief for the State of California as *amicus curiae* urging affirmance.

Solicitor General Griswold, by invitation of the Court, filed a memorandum for the United States as *amicus curiae*.

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellants in this case challenge certain computation procedures that the State of Texas uses in its federally assisted welfare program. Believing that neither the Constitution nor the federal welfare statute prohibits the State from adopting these policies, we affirm the judgment of the three-judge court below upholding the state procedures.

I

Appellants are Texas recipients of Aid to Families With Dependent Children (AFDC). They brought two class

actions, which were consolidated in the United States District Court for the Northern District of Texas, seeking injunctive and declaratory relief against state welfare officials. A three-judge court was convened pursuant to 28 U. S. C. § 2281.

The Texas State Constitution provides a ceiling on the amount the State can spend on welfare assistance grants.[1] In order to allocate this fixed pool of welfare money among the numerous individuals with acknowledged need, the State has adopted a system of percentage grants. Under this system, the State first computes the monetary needs of individuals eligible for relief under each of the federally aided categorical assistance programs.[2] Then, since the constitutional ceiling on welfare is insufficient to bring each recipient up to this full standard of need, the State applies a percentage reduction factor [3] in order to arrive at a reduced standard of need in each category that the State can guarantee.

Appellants challenge the constitutionality of applying a lower percentage reduction factor to AFDC than to

[1] Originally, the Texas Constitution prohibited all welfare programs. Section 51 of Art. III of the Constitution provided that the legislature "shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever . . ." However, beginning in 1933, exceptions to this rule were added to the state constitution in § 51-a, which now allows participation in the federal welfare programs, but limits state financing to the sum of $80,000,000. The legislature cannot exceed this welfare budget without a state constitutional amendment.

[2] Old Age Assistance (OAA), 42 U. S. C. § 301 *et seq.*; Aid to Families with Dependent Children (AFDC), 42 U. S. C. § 601 *et seq.*; Aid to the Blind (AB), 42 U. S. C. § 1201 *et seq.*; Aid for the Permanently and Totally Disabled (APTD), 42 U. S. C. § 1351 *et seq.*

[3] At the present time these factors are: OAA—100%; AB—95%; APTD—95%; and AFDC—75%. At the time this suit was instituted the AFDC percentage was 50%, but it was raised to 75% following a recent amendment of § 51-a. See n. 1, *supra*.

the other categorical assistance programs. They claim a violation of equal protection because the proportion of AFDC recipients who are black or Mexican-American is higher than the proportion of the aged, blind, or disabled welfare recipients who fall within these minority groups. Appellants claim that the distinction between the programs is not rationally related to the purposes of the Social Security Act, and violates the Fourteenth Amendment for that reason as well. In their original complaint, appellants also argued that any percentage-reduction system violated § 402 (a)(23) of the Social Security Act of 1935, as amended, 81 Stat. 898, 42 U. S. C. § 602 (a)(23), which required each State to make certain cost-of-living adjustments to its standard of need.

The three-judge court rejected appellants' constitutional arguments, finding that the Texas system is neither racially discriminatory nor unconstitutionally arbitrary. The court did, however, accept the statutory claim that Texas' percentage reductions in the AFDC program violate the congressional command of § 402 (a)(23). 304 F. Supp. 1332 (ND Tex. 1969).

Subsequent to that judgment, this Court decided *Rosado* v. *Wyman*, 397 U. S. 397 (1970). *Rosado* held that, although § 402 (a)(23) required States to make cost-of-living adjustments in their standard-of-need calculations, it did not prohibit use of percentage-reduction systems that limited the amount of welfare assistance actually paid. 397 U. S., at 413. This Court then vacated and remanded the first *Jefferson* judgment for further proceedings consistent with *Rosado*. 397 U. S. 821 (1970).

On remand, the District Court entered a new judgment, denying all relief. Then, in a motion to amend the judgment, appellants raised a new statutory claim. They argued for the first time that although a percentage-reduction system may be consistent with the statute, the

specific procedures that Texas uses for computing that reduction violate the congressional enactment. The District Court rejected this argument and denied without opinion appellants' motion to amend the judgment. This appeal under 28 U. S. C. § 1253 then followed, and we noted probable jurisdiction. 404 U. S. 820 (1971).

II

Appellants' statutory argument relates to the method that the State uses to compute the percentage reduction when the recipient also has some outside income. Texas, like many other States,[4] first applies the percentage reduction factor to the recipient's standard of need, thus arriving at a reduced standard of need that the State can guarantee for each recipient within the present budgetary restraints. After computing this reduced standard of need, the State then subtracts any nonexempt[5] income in order to arrive at the level of benefits that the recipient needs in order to reach his reduced standard of need. This is the amount of welfare the recipient is given.

Under an alternative system used by other States, the order of computation is reversed. First, the outside income is subtracted from the standard of need, in order to determine the recipient's "unmet need." Then, the percentage reduction factor is applied to the unmet need, in order to determine the welfare benefits payable.

The two systems of accounting for outside income yield somewhat different results.[6] Under the Texas system all

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[4] Nineteen of the 26 States that use a percentage reduction system follow the Texas procedure of accounting for outside income. See Memorandum for the United States as *Amicus Curiae* 8, 15–16.

[5] A certain portion of earned income must be exempted as a work incentive. See 42 U. S. C. § 602 (a)(8).

[6] Assuming two identical families, each with a standard of need

welfare recipients with the same needs have the same amount of money available each month, whether or not they have outside income. Since the outside income is applied dollar for dollar to the reduced standard of need, which the welfare department would otherwise pay in full, it does not result in a net improvement in the financial position of the recipient. Under the alternative system, on the other hand, any welfare recipient who also has outside income is in a better financial position because of it. The reason is that the percentage reduction factor there is applied to the "unmet need," after the income has been subtracted. Thus, in effect, the income-earning recipient is able to "keep" all his income, while he receives only a percentage of the remainder of his standard of need.[7]

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of $200, and outside, nonexempt income of $100, the two systems would produce these results:

Texas System	*Alternative System*
$ 200 (need)	$ 200 (need)
× .75 (% reduction factor)	−100 (outside income)
$ 150 (reduced need)	$ 100 (unmet need)
−100 (outside income)	× .75 (% reduction factor)
$ 50 (benefits payable)	$ 75 (benefits payable)

[7] Assuming two families with identical standards of need, but only one with outside income, the alternative system leaves more money in the hands of the family with outside income:

Outside Income	*No Outside Income*
$ 200 (need)	$ 200 (need)
−100 (outside income)	− 0 (outside income)
$ 100 (unmet need)	$ 200 (unmet need)
× .75 (% reduction factor)	× .75 (% reduction factor)
$ 75 (benefits payable)	$ 150 (benefits payable)
TOTAL INCOME (outside income plus benefits payable) = $175	TOTAL INCOME (outside income plus benefits payable) = $150

Each of the two systems has certain advantages. Appellants note that under the alternative system there is a financial incentive for welfare recipients to obtain outside income. The Texas computation method eliminates any such financial incentive, so long as the outside income remains less than the recipient's reduced standard of need.[8] However, since Texas' pool of available welfare funds is fixed, any increase in benefits paid to the working poor would have to be offset by reductions elsewhere. Thus, if Texas were to switch to the alternative system of recognizing outside income, it would be forced to lower its percentage reduction factor, in order to keep down its welfare budget. Lowering the percentage would result in less money for those who need the welfare benefits the most—those with no outside income—and the State has been unwilling to do this.

Striking the proper balance between these competing policy considerations is, of course, not the function of this Court. "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *King* v. *Smith*, 392 U. S. 309, 318–319 (1968) (footnotes omitted).[9] So long as the State's actions are not in violation of any specific provision of the Constitution or the Social Security Act, appellants' policy arguments must be addressed to a different forum.

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[8] Under the Texas system, once the income rises above the reduced standard of need the individual no longer receives any cash assistance. He then would have a financial incentive, since his income would be rising above the maximum he could expect from the welfare system.

[9] For a general review of the statutory scheme, see *Rosado* v. *Wyman*, 397 U. S. 397, 407–412 (1970).

Appellants assert, however, that the Texas computation procedures are contrary to § 402 (a)(23):

> "(a) A State plan for aid and services to needy families with children must
>
> . . . . .
>
> "(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

Recognizing that this statutory language, by its terms, hardly provides much support for their theory, appellants seek to rely on what they perceive to have been the broad congressional purpose in enacting the provision.

In *Rosado* v. *Wyman, supra,* the Court reviewed the history of this section and rejected the argument that it had worked any radical shift in the AFDC program. *Id.*, at 414 and n. 17. AFDC has long been referred to as a "scheme of cooperative federalism," *King* v. *Smith,* 392 U. S., at 316, and the *Rosado* Court dismissed as "adventuresome" any interpretation of § 402 (a)(23) that would deprive the States of their traditional discretion to set the levels of payments. 397 U. S., at 414–415 and n. 17. Instead, the statute was meant to require the States to make cost-of-living adjustments to their standards of need, thereby serving "two broad purposes":

> "First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis." *Id.*, at 412–413.

Texas has complied with these two requirements. Effective May 1, 1969, the standard of need for AFDC recipients was raised 11% to reflect the rise in the cost of living, and the State shifted from a maximum-grant system to its present percentage-reduction system. In this way, the State has fairly recognized and exposed the precise level of unmet need, and by using a percentage-reduction system it has attempted to apportion the State's limited benefits more equitably.

Although Texas has thus responded to the "two broad purposes" of § 402 (a) (23), appellants argue that Congress also intended that statute to increase the total number of recipients of AFDC, so that more people would qualify for the subsidiary benefits that are dependent on receipt of AFDC cash assistance.[10] The Texas computation procedures are thought objectionable since they do not increase the welfare rolls to quite the same extent as would the alternative method of recognizing outside income.

We do not agree that Congress intended § 402 (a) (23) to invalidate any state computation procedures that do not absolutely maximize individual eligibility for subsidiary benefits. The cost-of-living increase that Congress mandated would, of course, generally tend to increase eligibility,[11] but there is nothing in the legislative history

[10] Certain care-and-training provisions of the Social Security Act are available only to those who receive money payments under the categorical assistance programs. See 42 U. S. C. §§ 602 (a) (14), (15); 42 U. S. C. §§ 602 (a) (19), 632; 42 U. S. C. § 1396a (a) (10). Under the Texas computation procedures, those whose income exceeds their reduced standard of need receive no cash benefits and thus do not qualify for these subsidiary benefits, although they do have "unmet need" qualifying them for aid under the alternative computation procedure.

[11] The Court in *Rosado* recognized this as one of several effects attributable to § 402 (a) (23). 397 U. S., at 413. See also *id.*, at

indicating that this was part of the statutory purpose. Indeed, at the same time Congress enacted § 402 (a)(23) it included another section designed to induce States to reduce the number of individuals eligible for the AFDC program.[12] Thus, what little legislative history there is on the point, see *Rosado* v. *Wyman*, 397 U. S., at 409–412, tends to undercut appellants' theory. See *Lampton* v. *Bonin*, 304 F. Supp. 1384, 1391–1392 (ED La. 1969) (Cassibry, J., dissenting). See generally Note, 58 Geo. L. J. 591 (1970).

Appellants also argue that the Texas system should be held invalid because the alternative computation method results in greater work incentives for welfare recipients.[13] The history and purpose of the Social Security Act do indicate Congress' desire to help those on welfare become self-sustaining. Indeed, Congress has specifically mandated certain work incentives in § 402 (a)(8). There is no dispute here, however, about Texas' compliance with these very detailed provisions for work incentives. Neither their inclusion in the Act nor the language used by Congress in other sections of the Act supports the inference that Congress mandated the States to change their income-computation procedures in other, completely unmentioned areas.

Nor are appellants aided by their reference to Social Security Act § 402 (a)(10), 42 U. S. C. § 602 (a)(10), which provides that AFDC benefits must "be furnished

409 n. 13. The Court did not, however, hold that each one of these effects was intended by Congress. In fact, the *Rosado* holding as to the "two broad purposes" of Congress was stated above, and the Texas system is perfectly consistent with it. The Court mentioned widened eligibility simply as one of several possible effects that *might* follow from the statute as so construed.

[12] Act of Jan. 2, 1968, Pub. L. No. 90–248, Tit. II, § 208, 81 Stat. 894, repealed 83 Stat. 45.

[13] See n. 7, *supra*.

with reasonable promptness to all eligible individuals." That section was enacted at a time when persons whom the State had determined to be eligible for the payment of benefits were placed on waiting lists, because of the shortage of state funds. The statute was intended to prevent the States from denying benefits, even temporarily, to a person who has been found fully qualified for aid. See H. R. Rep. No. 1300, 81st Cong., 1st Sess., 48, 148 (1949); 95 Cong. Rec. 13934 (remarks of Rep. Forand). Section 402 (a)(10) also prohibits a State from creating certain exceptions to standards specifically enunciated in the federal Act. See, *e. g.*, *Townsend* v. *Swank*, 404 U. S. 282 (1971). It does not, however, enact by implication a generalized federal criterion to which States must adhere in their computation of standards of need, income, and benefits.[14] Such an interpretation would be an intrusion into an area in which Congress has given the States broad discretion, and we cannot accept appellants' invitation to change this longstanding statutory scheme simply for policy consideration reasons of which we are not the arbiter.

III

We turn, then, to appellants' claim that the Texas system of percentage reductions violates the Fourteenth Amendment. Appellants believe that once the State has computed a standard of need for each recipient, it is arbitrary and discriminatory to provide only 75% of that standard to AFDC recipients, while paying 100% of recognized need to the aged, and 95% to the disabled and the blind. They argue that if the State adopts a

[14] Appellants' reliance on language from *Dandridge* v. *Williams*, 397 U. S. 471, 480–481 (1970), is misplaced. The Court there explicitly failed to reach the State's argument that the purpose of § 602 (a)(10) was primarily to prevent the use of waiting lists. *Id.*, at 481 n. 12.

percentage-reduction system, it must apply the same percentage to each of its welfare programs.

This claim was properly rejected by the court below. It is clear from the statutory framework that, although the four categories of public assistance found in the Social Security Act have certain common elements, the States were intended by Congress to keep their AFDC plans separate from plans under the other titles of the Act.[15] A State is free to participate in one, several, or all of the categorical assistance programs, as it chooses. It is true that each of the programs is intended to assist the needy, but it does not follow that there is only one constitutionally permissible way for the State to approach this important goal.

This Court emphasized only recently, in *Dandridge* v. *Williams*, 397 U. S. 471, 485 (1970), that in "the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." A legislature may address a problem "one step at a time," or even "select one phase of one field and apply a remedy there, neglecting the others." *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 489 (1955). So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket. The very complexity of the problems suggests that there will be more

[15] Each categorical assistance program is embodied in a separate title of the Social Security Act, see n. 2, *supra*, and requires a state plan independent of the plans under the other titles. In 1962, however, Congress enacted 42 U. S. C. §§ 1381–1385, which for the first time enabled States to combine their plans, *but only for the non-AFDC programs*. Thus, while Congress has now enabled States to adopt a common plan for the other programs, it considered AFDC sufficiently different so as to require an independent plan.

than one constitutionally permissible method of solving them.

The standard of judicial review is not altered because of appellants' unproved allegations of racial discrimination. The three-judge court found that the "payment by Texas of a lesser percentage of unmet needs to the recipients of the AFDC than to the recipients of other welfare programs is not the result of racial or ethnic prejudice and is not violative of the federal Civil Rights Act or the Equal Protection Clause of the 14th Amendment." The District Court obviously gave careful consideration to this issue, and we are cited by its opinion to a number of subsidiary facts to support its principal finding quoted above. There has never been a reduction in the amount of money appropriated by the legislature to the AFDC program, and between 1943 and the date of the opinion below there had been five increases in the amount of money appropriated by the legislature for the program, two of them having occurred since 1959.[16] The overall percentage increase in appropriation for the programs between 1943 and the time of the District Court's hearing in this case was 410% for AFDC, as opposed to 211% for OAA and 200% for AB. The court further concluded:

> "The depositions of Welfare officials conclusively establish that the defendants did not know the racial make-up of the various welfare assistance categories prior to or at the time when the orders here under attack were issued."

Appellants in their brief in effect abandon any effort

[16] Since the original opinion below, there has been an additional increase. Following a constitutional amendment, see n. 3, *supra*, the appropriation has risen from $6,150,00 to $23,100,000.

to show that these findings of fact were clearly erroneous, and we hold they were not.

Appellants are thus left with their naked statistical argument: that there is a larger percentage of Negroes and Mexican-Americans in AFDC than in the other programs,[17] and that the AFDC is funded at 75% whereas the other programs are funded at 95% and 100% of recognized need. As the statistics cited in the footnote demonstrate, the number of minority members in all categories is substantial. The basic outlines of eligibility for the various categorical grants are established by Congress, not by the States; given the heterogeneity of the Nation's population, it would be only an infrequent coincidence that the racial composition of each grant class was identical to that of the others. The acceptance of appellants' constitutional theory would render suspect each difference in treatment among the grant classes, however lacking in racial motivation and however otherwise rational the treatment might be. Few legislative efforts to deal with the difficult problems posed by current welfare programs could sur-

[17]

Program	*Year*	*Percentage of Negroes and Mexican-Americans*	*Percentage of White-Anglos*	*Number of Recipients*
OAA	1969	39.8	60.2	
	1968	38.7	61.3	230,000
	1967	37.0	63.0	
APTD	1969	46.9	53.1	
	1968	45.6	54.4	4,213
	1967	46.2	53.8	
AB	1969	55.7	44.3	
	1968	54.9	45.1	14,043
AFDC	1969	87.0	13.0	
	1968	84.9	15.1	136,000
	1967	86.0	14.0	

vive such scrutiny, and we do not find it required by the Fourteenth Amendment.[18]

Applying the traditional standard of review under that amendment, we cannot say that Texas' decision to provide somewhat lower welfare benefits for AFDC recipients is invidious or irrational. Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are of course possible, it is not irrational for the State to believe that the young are more adaptable than the sick and elderly, especially because the latter have less hope of improving their situation in the years remaining to them. Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it.[19]

Similarly, we cannot accept the argument in MR.

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[18] In *James* v. *Valtierra*, 402 U. S. 137 (1971), it was contended that a California referendum requirement violated the Fourteenth Amendment because it imposed a mandatory referendum in the case of an ordinance authorizing low income housing, while referenda with respect to other types of ordinances had to be initiated by the action of private individuals. The Court responded:

"But of course a lawmaking procedure that 'disadvantages' a particular group does not always deny equal protection. Under any such holding, presumably a State would not be able to require referendums on any subject unless referendums were required on all, because they would always disadvantage some group. And this Court would be required to analyze governmental structures to determine whether a gubernatorial veto provision or a filibuster rule is likely to 'disadvantage' any of the diverse and shifting groups that make up the American people." *Id.*, at 142.

[19] Just as the State's actions here do not violate the Fourteenth Amendment, we conclude that they do not violate Title VI of the

JUSTICE MARSHALL's dissent that the Social Security Act itself requires equal percentages for each categorical assistance program. The dissent concedes that a State might simply refuse to participate in the AFDC program, while continuing to receive federal money for the other categorical programs. See *post*, at 577. Nevertheless, it is argued that Congress intended to prohibit any middle ground—once the State does participate in a program it must do so on the same basis as it participates in every other program. Such an all-or-nothing policy judgment may well be defensible, and the dissenters may be correct that nothing in the statute expressly rejects it. But neither does anything in the statute approve or require it.[20]

Civil Rights Act of 1964, 42 U. S. C. § 2000d *et seq.* The Civil Rights Act prohibits discrimination in federally financed programs. We have, however, upheld the findings of nondiscriminatory purpose in the percentage reductions used by Texas, and have concluded that the variation in percentages is rationally related to the purposes of the separate welfare programs. The Court's decision in *Griggs* v. *Duke Power Co.*, 401 U. S. 424 (1971), is therefore inapposite. In *Griggs*, the employment tests having racially discriminatory effects were found not to be job-related, and for that reason were impermissible under the specific language of Title VII of the Civil Rights Act. Since the Texas procedure challenged here *is* related to the purposes of the welfare programs, it is not proscribed by Title VI simply because of variances in the racial composition of the different categorical programs.

[20] MR. JUSTICE MARSHALL's dissent cites the 1950 amendments to the Social Security Act as support for its novel statutory theory that States must provide equal aid levels in each welfare category. The 1950 amendments included "a revised method of determining the Federal share of assistance costs," 95 Cong. Rec. 13932, so that the Federal Government would pay a substantially equal percentage of matching funds to state plans in each of the categorical assistance programs. See S. Doc. No. 208, 80th Cong., 2d Sess., 101. But this revision of the grant-in-aid formula in § 403 of the Act was not accompanied by any corresponding amendment of § 402, the section of the Act dealing with congressional limitations on state AFDC

In conclusion, we re-emphasize what the Court said in *Dandridge* v. *Williams*, 397 U. S., at 487:

> "We do not decide today that the [state law] is wise, that it best fulfills the relevant social and economic objectives that [the State] might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. . . . [T]he Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients."

Affirmed.

MR. JUSTICE STEWART joins in Part III of the Court's opinion.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

I would read the Act more generously than does the Court. It is stipulated that 87% of those receiving AFDC aid are Blacks or Chicanos. I would therefore

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programs. Indeed, proponents of the 1950 amendments explicitly recognized and endorsed the longstanding policy that the Federal Government sets only minimum AFDC standards, while leaving the States "wide discretion both in determining policies and in setting standards of need." S. Doc. No. 208, *supra*, at 101. The enactment of a modified graht-in-aid formula hardly suggests Congress' intent to engage in "extensive alteration of the basic underlying structure of an established program." *Rosado* v. *Wyman*, 397 U. S., at 414 n. 17.

read the Act against the background of rank discrimination against the Blacks and the Chicanos and in light of the fact that Chicanos in Texas fare even more poorly than the Blacks. See L. Grebler, J. Moore, & R. Guzman, The Mexican-American People, pts. 2 and 3 (1970); J. Burma, Mexican-Americans in the United States 143–199 (1970); Schwartz, State Discrimination Against Mexican Aliens, 38 Geo. Wash. L. Rev. 1091 (1970); U. S. Commission on Civil Rights, The Mexican American (1968); U. S. Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest (1970). In *Rosado* v. *Wyman*, 397 U. S. 397, 413, we said that in administering such a program a State "may not obscure the *actual* standard of need." Texas does precisely that by manipulating a mathematical formula.

In *Rosado*, we described how some States establish upper limits or maximums of aid, while others, like Texas, "curtail the payments of benefits by a system of 'ratable reductions' whereby all recipients will receive a fixed percentage of the standard of need." *Id.*, at 409. Then in footnote 13 we described what that meant: "A 'ratable reduction' represents a fixed percentage of the standard of need that will be paid to all recipients. In the event that there is *some income that is first deducted*, the ratable reduction is applied to the amount by which the individual or family income falls short of need." *Id.*, at 409 n. 13 (emphasis added).

If Texas first deducted outside income and then made its ratable reduction, the welfare recipient would receive a somewhat more generous payment, as the opinion of the Court illustrates in footnote 6 of its opinion. Not only does the Texas system avoid this generous approach, but it also impermissibly constricts the standard of need in conflict with *Rosado*, *Dandridge* v. *Williams*, 397 U. S.

471, and *Townsend* v. *Swank*, 404 U. S. 282. Under Texas' method of computation, a family—otherwise eligible for AFDC benefits but with nonexempt income greater than the level of benefits and less than the standard of need—is denied both AFDC cash benefits and other noncash benefits such as medicaid.[1] It seems inconceivable that Congress could have intended that noncash benefits be denied those with incomes less than the standard of need solely because that income was earned rather than from categorical assistance. Yet this is precisely the result sanctioned by the Court today because eligibility for these programs is tied to the receipt of cash benefits.[2]

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[1] The Court's acknowledgment that "[t]he Texas computation method eliminates any . . . financial incentive [for welfare recipients to obtain outside income], so long as the[ir] outside income remains less than the[ir] . . . reduced standard of need," *ante*, at 541, understates the effect of the Texas system on the recipients. The Texas system not only fails to provide an incentive for those on the welfare rolls to break the cycle of poverty by obtaining employment, but—in certain cases—it also penalizes those who seek employment. The family with nonexempt income equal to Texas' level of benefits stands in much the same cash position as the AFDC recipient, but solely because that family has earned that last marginal dollar that makes it no longer eligible for categorical assistance it also is denied medical assistance, social services, and training. The Solicitor General tells us that the value of the medical services alone is worth $50–$60 per month to the average Texas AFDC family. Memorandum for the United States as *Amicus Curiae* 7 n. 5.

[2] Eligibility for family development services is keyed to the "recei[pt] [of] aid to families with dependent children," 42 U. S. C. § 602 (a)(14); so, too, with employment assistance, *id.*, at § 602 (a)(15)(A) ("receiving aid under the plan"); protection against child's neglect or abuse, *id.*, at § 602 (a)(16) ("receiving aid"); plans to establish paternity and secure support, *id.*, at § 602 (a)(17)(A)(i) and (ii) ("receiving aid," "receiving such aid"); work incentive programs, *id.*, at § 602 (a)(19)(A)(i) ("receiving aid to families with

One of the stated purposes of the AFDC program is "to help such parents or relatives [of needy dependent children] *to attain or retain capability for the maximum self-support and personal independence.*" 42 U. S. C. § 601 (emphasis added). The Senate Finance Committee has stated, "A key element in any program for work and training for assistance recipients is *an incentive for people to take employment.*" S. Rep. No. 744, 90th Cong., 1st Sess., 157 (1967) (emphasis added). The majority acknowledges that "[t]he history and purpose of the Social Security Act . . . indicate Congress' desire to help those on welfare become self-sustaining." *Ante*, at 544. But it nonetheless ignores the explicit congressional policy in favor of work incentives and upholds a system which provides penalties and disincentives for those who seek employment.[3]

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dependent children"); and medical assistance plans, *id.*, at § 1396a (a)(10) ("individuals receiving aid or assistance").

Would Congress have tied needy families' eligibility for these programs to the receipt of cash benefits had it foreseen that this Court would disregard the statutory mandate "that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals"? 42 U. S. C. § 602 (a)(10).

[3] The rationale which the Court uses to reach this result is at odds with time-honored rules of statutory interpretation. First, the Court gives but a grudging interpretation to the recital in § 401 of the Act, 42 U. S. C. § 601, that one of Congress' purposes was to encourage welfare recipients to become self-supporting. The Court in effect disregards the rule that recitals embody "the general purposes which . . . Congress undertook to achieve." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 297. And see *Coosaw Mining Co.* v. *South Carolina*, 144 U. S. 550, 563; *United States* v. *Fisher*, 2 Cranch 358, 386. Second, the Court attributes to Congress the purpose of providing work incentives, *e. g.*, 42 U. S. C. § 602 (a)(8), while at the same time allowing the imposition of penalties and disincentives for obtaining employment. The Court departs from the principle that "[i]n the exposition of statutes," various sections of the same act "are supposed to have the same object," *Kohlsaat* v. *Murphy*, 96

The California Supreme Court in *Villa* v. *Hall*, 6 Cal. 3d 227, 490 P. 2d 1148, struck down the system this Court approves today, where California used a statutory maximum of payments rather than a ratable reduction. The California Supreme Court quite properly said that what the State was attempting was inconsistent with *Rosado*. Moreover it had an additional reason:

> "The conclusion that the Social Security Act requires outside income to be subtracted from standards of need rather than from statutory maximums or ratable reductions is also founded on a strong public policy of encouraging welfare recipients to become constantly more self-supporting. Yet deducting income from statutory maximums makes gainful employment significantly less attractive to the recipient. This follows because all nonexempt income will be offset directly against the amount of the grant and not against the standard of need to determine actual need; for every nonexempt dollar earned, the amount of aid will therefore be decreased one dollar. Since the grant is always less than the standard of need, in many instances the system adopted by the Welfare Reform Act will result in an individual's need not being met even after adding both exempt and nonexempt income to the AFDC payment. Such recipients will be forced to exist below the bare minimum necessary for adequate care, even though they have commenced, by obtaining employment, to break free from the debilitating 'welfare syndrome.' The practice thus conflicts with

U. S. 153, 159–160, and holds instead that Congress was working at cross-purposes in different subsections of § 402, 42 U. S. C. § 602. Finally, by giving the Social Security Act a miserly interpretation, the Court disregards the canon that remedial legislation, such as the Social Security Act, is to be interpreted liberally to effectuate its purposes. *E. g., Peyton* v. *Rowe*, 391 U. S. 54, 65.

the stated federal policy to provide incentives to obtain and maintain an employment status." *Id.*, at 235–236, 490 P. 2d, at 1153–1154.

Moreover, *Townsend* v. *Swank*, 404 U. S. 282, calls for a reversal in the present case. It is conceded that plaintiff Maria T. Davilla and 2,470 other families are denied aid in Texas by reason of its new formula, see 304 F. Supp. 1332, 1343, despite the fact that their income is below the standard of need and that of those receiving AFDC aid only 75% of their needs is met.[4]

Under § 402 (a)(10) of the Social Security Act (which governs AFDC) "aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." 42 U. S. C. § 602 (a)(10). In *Townsend* children 18 through 20 years of age who attended high school or vocational training were eligible for AFDC benefits but such children in college were not eligible. We held that "a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause."[5] 404 U. S., at 286.

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[4] The percentages of need that will be met by Texas under the various heads are as follows:

Old Age Assistance	100%
Aid to the Blind	95%
Aid to the Permanently and Totally Disabled	95%
Aid to Families with Dependent Children	75%

When this action was instituted, Texas' AFDC percentage level of benefits was only 50% of the standard of need. During the course of this litigation, Texas increased the AFDC level of benefits to 75% of need.

[5] To the same effect is our recent decision in *Engelman* v. *Amos*, 404 U. S. 23 (1971), aff'g *sub nom. X* v. *McCorkle*, 333 F. Supp. 1109 (NJ 1970). There, relying on *Rosado* v. *Wyman*, 397 U. S. 397, the District Court held inconsistent with the Social Security Act—and thus unconstitutional under the Supremacy Clause—a state provision

What Texas does here is to exclude large numbers of AFDC beneficiaries by application of a state eligibility test that is narrower than the one we approved in *Rosado*. While a State has some discretion in its use of federal funds, it may not manipulate by its own formula groups of "needy" claimants. The decision to participate or not in the federal program is left to the States. *Townsend* v. *Swank, supra,* at 290–291. When, as here, federal and state funds are in short supply, the problem is not to lop off some categories of those in "need" but to design a way of managing the system of "need" so as not to raise equal protection questions.[6] *Id.,* at 291.

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which denied AFDC cash payments and ancillary benefits to those whose nonexempt income was less than the standard of need established by the State. We unanimously affirmed that decision. To be sure, *Engelman* dealt wtih federal provisions different from those presently in issue (42 U. S. C. § 602 (a) (8) (A) (ii); 45 CFR § 233.20 (a) (3) (ii)), but that does not distinguish the case. Rather, it merely emphasizes that which—up until today—was the broad scheme of the Social Security Act: those whose nonexempt income was below the standard of need established by the State and who met the other nonfinancial criteria for eligibility were to receive benefits. See 42 U. S. C. § 602 (a) (10).

[6] To be sure, "[t]here is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." *King* v. *Smith,* 392 U. S. 309, 318–319 (footnotes omitted). Accommodation of a State's limited financial resources, however, is to be made in setting the level of benefits and not by gerrymandering the standard of need. *Rosado* v. *Wyman, supra,* at 413. Here, the "reduced standard of need" which the majority recognizes to be the consequence of the Texas computation procedures, *ante,* at 543 n. 10, violates § 402 (a) (23) of the Social Security Act, 42 U. S. C. § 602 (a) (23), and our decision in *Rosado*. Section 402 (a) (23) mandated an upward revision of the standard of need, and the "reduced standard of need" Texas applies to certain of its needy violates this requirement.

Section 402 (a) (10) of the Social Security Act provides that AFDC shall be furnished with reasonable promptness to all *eligible* individuals. The House Report in commenting on it said:

> "Shortage of funds in aid to dependent children has sometimes, as in old-age assistance, resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them. . . . [T]his difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds." H. R. Rep. No. 1300, 81st Cong., 1st Sess., 48 (1949).

As the Court said in *Dandridge* v. *Williams*, 397 U. S., at 481, "So long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated." It is violated here because nearly 2,500 families that satisfy the requirements of "need" are denied any relief.[7]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, and with whom MR. JUSTICE STEWART joins as to Part I only, dissenting.

Appellants, recipients of Aid to Families With Dependent Children (AFDC) in Texas, brought this action to challenge two distinct aspects of the Texas AFDC program. First, appellants challenge the manner in which

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[7] 45 CFR § 233.10 (a) (1) (ii) provides:

"The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act."

Texas arrives at the amount it will pay to persons who are needy. Second, they urge that Texas acts illegally in providing more money for persons receiving aid under other social welfare legislation than for persons receiving AFDC aid. The Court rejects both claims. I dissent.

Before proceeding to explain why I disagree with the Court, I would like to illustrate what the disputes in this case are all about. If a State is unable or unwilling to establish a level of AFDC payments to meet all the needs of all recipients, federal law permits the State to use a percentage reduction factor as a method of reducing payments in a somewhat equitable manner. Texas has adopted a system in which the percentage reduction factor is applied against the standard of need before outside income is deducted. Appellants contend that federal law requires the State to deduct outside income before the percentage reduction factor is applied. While describing the differences between the two alternatives is a Herculean task, the figures themselves are not difficult to comprehend. Footnote 6 of the Court's opinion, for example, demonstrates that the Texas system provides less aid to a family with outside income than the alternative system. It is also immediately obvious that under the Texas system, as soon as the family's income reaches $150, it no longer receives anything from the State, whereas under the alternative, a family earning the same $150 would continue to receive some state funds. Hence, the Texas method of computation contracts the class of families eligible to receive state aid. Appellants contend that the characteristics of the Texas system are inconsistent with federal legislation and that only the alternative system comports with the intent of Congress. I agree.

Appellants also claim that the percentage reduction factor employed by Texas is illegal, irrespective of the

method of computing payments, because it is lower than the factor used in other social welfare programs that have participants with identical standards of need. I also agree with appellants on this point, but for slightly different reasons from those they have urged.

I

A. In considering the question whether Texas' method of computing eligibility for AFDC payments comports with the federal statute, 42 U. S. C. § 601 *et seq.*, it is important to keep in mind the words of Mr. Justice Cardozo: "When [federal] money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states." *Helvering* v. *Davis*, 301 U. S. 619, 645 (1937). Mr. Justice Harlan reiterated this point in *Rosado* v. *Wyman*, 397 U. S. 397, 422–423 (1970), when he stated that irrespective of the policies that a State might wish to pursue by utilizing AFDC money in one way or another, the ultimate question to be answered in each case is whether the action of the State comports with the requirements of federal law.

The Court concludes in the instant case that there is no general congressional policy violated by Texas' choice between the alternative methods of applying a percentage-reduction factor to its determined standard of need, and also that no specific statutory provision prohibits Texas from choosing one alternative rather than the other. In concluding that the legislative history is inconclusive and that "what little legislative history there is on the point . . . tends to undercut appellants' theory," the Court has, in my opinion, taken only a superficial look into the history of the statute and has ignored the intent of Congress in various sections of

the AFDC legislation as interpreted by this Court in prior cases.

B. I begin by considering the impact of § 402 (a)(23) of the Social Security Act of 1935, as amended, 81 Stat. 898, 42 U. S. C. § 602 (a)(23), on appellants' argument. That section provides that

> "(a) A State plan for aid and services to needy families with children must
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> . . . . . .
>
> "(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted."

Consideration of this section must, of course, begin with *Rosado* v. *Wyman, supra,* where we examined the derivation of this section in great detail.

The relevant facts in *Rosado* are concisely stated in 397 U. S., at 416. New York State had changed its AFDC program so that it no longer determined need on an individualized basis, but instead substituted a system fixing maximum family allowances based on the number of individuals per family. The result was a drastic reduction in overall payments. New York State welfare recipients brought the suit in *Rosado,* claiming that by changing its AFDC system from an individualized-grant program to a maximum-grant program, New York had violated § 402 (a)(23).

Despite our recognition that "[t]he background of § 402 (a)(23) reveals little except that we have before us a child born of the silent union of legislative compromise," 397 U. S., at 412, we determined to discover

what Congress had in mind in adding the section to the pre-existing AFDC legislation. We concluded that two general purposes could be ascribed to the section:

> "First, to require States to face up realistically to the magnitude of the public assistance requirement and lay bare the extent to which their programs fall short of fulfilling actual need; second, to prod the States to apportion their payments on a more equitable basis." 397 U. S., at 412–413.

These conclusions led us to reject the holding of the District Court, 304 F. Supp. 1354, 1377, that Congress intended to prevent any reduction whatever in AFDC payments, and to reject the argument of the welfare recipients that if payments could be reduced § 402 (a) (23) would be meaningless. We decided that "a State may, after recomputing its standard of need, pare down payments to accommodate budgetary realities by reducing the percent of benefits paid or switching to a percent reduction system, but it may not obscure the *actual* standard of need." 397 U. S., at 413 (emphasis in original). Far from emasculating the statute, our reading recognized that the statute had at least three specific salutary effects, and that these were the effects that Congress intended in enacting the legislation:

> "It has the effect of requiring the States to recognize and accept the responsibility for those additional individuals whose income falls short of the standard of need as computed in light of economic realities and to place them among those eligible for the care and training provisions. Secondly, while it leaves the States free to effect downward adjustments in the level of benefits paid, it accomplishes within that framework the goal, however modest, of forcing a State to accept the political

> consequence of such a cutback and bringing to light the true extent to which actual assistance falls short of the minimum acceptable. Lastly, by imposing on those States that desire to maintain 'maximums' the requirement of an appropriate adjustment, Congress has introduced an incentive to abandon a flat 'maximum' system, thereby encouraging those States desirous of containing their welfare budget to shift to a percentage system that will more equitably apportion those funds in fact allocated for welfare and also more accurately reflect the real measure of public assistance being given." *Id.*, at 413–414.

Thus, it is clear that we based our decision in *Rosado*, a decision that interpreted § 402 (a)(23) to permit a decrease in actual AFDC payments, largely on the conclusion that Congress wanted, not to bar decreases, but to accomplish other objectives. The fact is that the Court today undermines each of those objectives and destroys the premise on which *Rosado* was decided.

One specific congressional goal we saw in § 402 (a)(23) was that "[r]ecalculation of need may serve to render eligible for benefits families which may appear under unadjusted standards marginally to have attained self-sufficiency, but which in fact are unable to subsist at the present cost of living." Memorandum for the United States as *Amicus Curiae* in *Rosado* v. *Wyman* 8. In other words, we read the section as expressing Congress' willingness to permit reductions in actual payments in return for the addition of more families to the rolls of AFDC recipients. Accord, *Lampton* v. *Bonin*, 304 F. Supp. 1384 (ED La. 1969), vacated and remanded for reconsideration in light of *Rosado*, 397 U. S. 663 (1970); *Alvarado* v. *Schmidt*, 317 F. Supp. 1027 (WD Wis. 1970). As I have pointed out above, the Texas

system limits the number of AFDC recipients and eliminates marginal cases. This is directly contrary to the intent of Congress as we saw it in *Rosado*.

A second legislative aim that we saw in the section was to force States to realize the political consequences of reducing welfare payments. It must be clear that the Texas system of administering AFDC payments effectively undermines this aim by enabling the State to maintain a constant percentage reduction factor so that the system on its face appears to contain no reductions in payments. Welfare reductions are surreptitiously accomplished by eliminating those persons who have marginal income from eligibility for AFDC payments. While the congressional intent may not be totally emasculated by this system, it is certainly not well served.

The third and final purpose that we found that Congress had specifically in mind in enacting § 402 (a) (23) was to provide an incentive to States to abandon a flat "maximum" system. Even though Texas does not now use such a system, the Court's approval of the system that Texas does use will effectively remove the incentive from the statute. A State that uses a flat maximum system was required by § 402 (a)(23) to adjust the maximums upward to reflect a rise in the cost of living. Since a State that uses a percentage reduction system may avoid the strains cost-of-living adjustments place on the budget simply by lowering the percentage that it chooses to pay, the statute encouraged abandonment of flat maximums in favor of the more equitable percentage reductions. The Court undermines the incentive by offering States a way to circumvent the cost-of-living adjustments under the flat maximum system. In order to maintain the maximums without increasing expenditures, States could, under the Court's opinion, begin to use the maximum to determine AFDC eligibility

rather than the standard of need. The result of this approach would be to reduce the number of persons eligible for assistance and to reduce the grants of anyone with any outside income. Rather than serve as an incentive to States to change to a percentage reduction system, as Congress intended, § 402 (a)(23) may now be a powerful incentive to States to maintain or revert to maximum grants.

The manner in which the incentive that *Rosado* saw in § 402 (a)(23) is stifled can be illustrated by another look at the family having an income of $100 and a need of $200. Footnote 6 of the Court's opinion demonstrates that under the Texas percentage-reduction system, even if the family had no income, the maximum amount of aid that the family could obtain would be $150. Let us assume that Texas maintained a maximum grant system and that prior to the enactment of § 402 (a)(23), the maximum grant for a family with $200 need was $100. We assumed in *Rosado* that the following computation would be made.

Need	$200
Income	$100
Unmet Need	$100
Maximum Grant	$100
Total Family Funds	$200

Section 402 (a)(23) required an increase in the standard of need and the level of maximum grants to reflect the rise in the cost of living. Assuming that a 20% increase was mandated by the rise in living costs, it is obvious that if the number of families remained stable and if income were stable, the costs of AFDC to the State would increase by 20%. There was an incentive to change to a percentage-reduction system to avoid this.

Until recently no one thought that the State could change to the following system in order to reflect the rise in the cost of living:

New Need	$240
New Maximum Grant	$120
Family Income	$100
State Aid	$ 20

To state it more simply, the maximum grant is similar to, and designed to serve the same purposes as, the percentage-reduction factor. If the percentage-reduction factor can be applied to need before income is subtracted, it is impossible to see why income could not be set off against maximum grants. True, Texas did not choose this alternative, but it is available under today's decision. A State can, by changing the manner in which it sets off income, absorb an increase in maximums and end up paying less. Where is the incentive now to adopt percentage-reduction systems?

This illustration is much more than mere speculation as to what might happen under today's decision. The illustration represents what at least one State—California—has already done, or tried to do. Only very recently, the California Supreme Court struck down the State's AFDC scheme for noncompliance with the federal statute. *Villa* v. *Hall*, 6 Cal. 3d 227, 490 P. 2d 1148 (1971).

The California Supreme Court, having been referred to the District Court opinion in the instant case as support for California's system, took the position that neither the California nor the Texas system could stand in light of *Rosado*. I agree. Indeed, the United States in its Memorandum as *Amicus Curiae* in this case (p. 5) concedes that if *Rosado* represents "a binding

construction of the Act, appellants are thus entitled to prevail." The government proceeds to argue that the question presented here was not before us in *Rosado*. *Ibid.* I must agree with appellants that the Government's argument is disingenuous, at best. See Brief for Appellants 80. The question of what § 402(a)(23) means was most certainly before us in *Rosado*. It was, in fact, all that was before us. In that case we rejected the broad construction that the District Court had given the section, but we endeavored as best we could to extract some meaning from its muddled history. The United States seeks here to have us do what we explicitly said we would not do in *Rosado*: *i. e.*, interpret the section in such a way that it is nothing more than a "meaningless exercise in 'bookkeeping.'" 397 U. S., at 413. If we were not making a "binding construction" of the statute in *Rosado*, it is impossible for me to ascertain what we were doing. Hence, I agree with the Government that appellants are entitled to prevail.

Surprisingly enough, the Court makes even shorter shrift of *Rosado* than does the Government. In a footnote, the Court states that widened eligibility and the other effects that *Rosado* said were intended by Congress when it enacted § 402 (a)(23) were merely possible effects of the statute, not necessary ones. I submit that this cavalier treatment of *Rosado* is completely unwarranted. *Rosado* was not an easy case. The absence of a clear legislative history forced us to examine the "muted strains" of the congressional voice and to struggle to "discern the theme in the cacophony of political understanding." 397 U. S., at 412. Unlike the Court in this case, which simply looks to see if the legislative history is distorted enough to be ignored, the Court in *Rosado* carefully scrutinized every aspect of the history in order to perceive the congressional intent. That was a difficult task, but not an impossible one. The balance

that we saw Congress striking in reducing payments while increasing eligibility has already been described. We relied on this balance to decide *Rosado*. We were not merely speculating as to the intent of Congress; we were holding that there was a specific intent that was binding in that case. That decision, in my view, is also binding here. This is my first disagreement with the majority.

C. The second provision in the AFDC legislation that I believe is relevant is § 402 (a)(8) of the Social Security Act, as amended, 81 Stat. 881, 42 U. S. C. § 602 (a)(8), which was added to the AFDC statute along with § 402 (a)(23) in 1968. The purpose of this section is to encourage AFDC recipients to seek private employment and to end their need for public assistance. H. R. Rep. No. 544, 90th Cong., 1st Sess. (1967); S. Rep. No. 744, 90th Cong., 1st Sess. (1967). To accomplish this objective the statute provides that all of the earned income of each dependent child receiving AFDC aid who is a full- or part-time student, and a portion of the earned income of certain other relatives, will be disregarded in the State's determination of need. We only recently had occasion to consider the effect of this provision in *Engelman* v. *Amos*, 404 U. S. 23 (1971).

In *Engelman* we considered a New Jersey scheme for administering AFDC funds that established income ceilings for families. When the families' incomes exceeded the ceilings they no longer were eligible for AFDC aid. The District Court analogized *Engelman* to *Rosado* v. *Wyman, supra,* and determined that the State's system was inconsistent with the federal Act. 333 F. Supp. 1109. The District Court recognized that the 1968 amendments to the AFDC legislation were designed to increase eligibility for AFDC aid, not to decrease it. Because the District Court viewed § 402 (a)(8) as requiring a State to disregard certain kinds of

income in determining eligibility for aid, the District Court struck down the New Jersey scheme, in effect holding that New Jersey could not evade the income disregard by imposing an income ceiling not contemplated by Congress. Families that exceeded the State's income ceilings were still entitled to AFDC aid so long as their income, excluding income covered by § 402 (a) (8), did not exceed the State's standard of need. The effect of the decision was to increase the class of persons eligible for AFDC aid. We affirmed the decision without even hearing argument.

Both "the New Jersey and the Texas provisions . . . appear to have been animated by the same desire . . . ." Memorandum for the United States as *Amicus Curiae* 11. Both seek to limit the number of AFDC recipients, and both violate the federal statute. Indeed, the very purpose of § 402 (a) (8)—to encourage people to work by permitting them to continue to draw AFDC funds—shows that Congress wanted as many needy people as possible to be part of the program.

The Texas scheme certainly does not violate § 402 (a) (8) in the way that the New Jersey scheme did, for as far as we know, Texas excludes income as required by the statute when computing eligibility. But, as the opinion of the Court indicates, the Texas system has a fault not found in New Jersey: *i. e.*, Texas discourages recipients from earning outside income. This is why I believe that Texas violates the spirit of the federal statute.

It might be argued that Congress only sought to encourage certain AFDC recipients to earn income and only in a certain amount—the persons and amounts specified in § 402 (a) (8). This argument might be persuasive but for one fact—Congress never had any idea that a State would attempt to employ a system such as that used by Texas. Nowhere in the legislative history

is there any mention of such a system. See, *e. g.*, House Committee on Ways and Means, Section-By-Section Analysis of H. R. 5710, 90th Cong., 1st Sess. (Comm. Print 1967). Congress was, in fact, informed by HEW that a different standard from that used by Texas was required. See Hearings on H. R. 12080 before the Senate Committee on Finance, 90th Cong., 1st Sess., pt. 1, pp. 255–265 (testimony of Wilbur Cohen). Until very recently every indication by HEW was that the Texas system would be unlawful. In light of the state of ignorance in which Congress found itself, it is not surprising that there is no specific rejection of the Texas system in the 1968 amendments. But § 402 (a)(8) and everything in the legislative history certainly indicate that Congress had a strong desire to encourage AFDC recipients to work. Because the Texas program is inconsistent with this desire, I believe it is illegal.

This is the second reason for my disagreement with the Court.

D. Another section of the statute that must be examined is § 402 (a)(10) of the Social Security Act, 64 Stat. 550, as amended, 42 U. S. C. § 602 (a)(10), which requires that a state AFDC plan shall

> "provide . . . that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals."

The Court states that the primary purpose of this section was to outlaw the use of waiting lists as a means of minimizing a State's welfare expenditures. There is clearly support for this view, as the Court noted in *Dandridge* v. *Williams*, 397 U. S. 471, 481 n. 12 (1970).

Before the Court in *Dandridge* was the question whether maximum-grant limitations were inconsistent with the federal statute. The Court upheld the maximums, but said in the course of so doing: "So long as some aid is provided to all eligible families and all eligible children, the statute itself is not violated." *Id.*, at 481. This is plainly dictum, but I believe that it is well-considered dictum that should be followed in this case.

It must be remembered that *Dandridge* and *Rosado* were decided on the same day. Thus, the Court assumed in *Dandridge* that the 1968 amendments to the AFDC legislation expanded the list of eligible recipients in the manner suggested in *Rosado*. The Court was also aware in *Dandridge* that § 402 (a)(7) of the Social Security Act, as amended, 53 Stat. 1379, 42 U. S. C. § 602 (a)(7), had been part of the AFDC statute since 1939. That section provides that

> "except as may be otherwise provided [in § 402 (a)(8), discussed, *supra*] . . . the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children . . . ."

The Court assumed, therefore, that in offering aid a State would first set a standard of need and then examine the income levels of applicants for aid. Anyone whose income was less than the standard of need would be eligible for assistance, or so the Court assumed. *Dandridge*, of course, established that the aid that might be forthcoming did not have to equal need and that large families could get proportionately less aid than small families. Just as in *Rosado*, the Court in *Dandridge* viewed the intent of Congress to be to aid as many needy people as possible, rather than to offer as much aid as possible to a lesser number of people. In light of this, I believe

that today's decision violates the spirit of *Dandridge*, as well as the holding of *Rosado*.

Moreover, in my view, § 402 (a)(7) tells the States how to compute eligibility, and that section does not allow for the Texas scheme. Despite the position of the Government in this case, I find support for my reading of § 402 (a)(7) in HEW's own regulations, especially 45 CFR §§ 233.20 (a)(2), 233.20 (a)(3)(ii), which indicate to me that income is to be subtracted from the standard of need before any determination is made as to how much aid the State will give.

Because I believe the Texas system violates § 402 (a)(7), it seems to me that eligible persons are being denied aid in violation of § 402 (a)(10), which requires that aid be furnished to all eligible persons promptly. For me, this case is no different from *King* v. *Smith*, 392 U. S. 309 (1968) (striking down substitute-father regulation) or *Townsend* v. *Swank*, 404 U. S. 282 (1971) (striking down restriction on receipt of aid by college students). The state procedure denies eligible persons aid, and, regardless of the State's purposes, the procedure cannot stand in conflict with the federal statute.

I disagree with the Court a third time.

E. The last portion of the federal statute that I believe should be considered is that portion dealing with the social services that are available to AFDC recipients. See, *e. g.*, 42 U. S. C. §§ 602 (a)(14), (15) (assistance in family planning and child-welfare services; assistance in entering the work force and reducing the incidence of births out of wedlock); 42 U. S. C. §§ 602 (a)(19), 632 (employment training programs); 42 U. S. C. § 1396a (a)(10) (medical assistance). Congress keyed all of these provisions to persons or families that were receiving aid. By limiting the number of such persons and families receiving aid, Texas has also limited the availability of

these social services. At least one other court has concluded that

> ". . . Congress's major concern was the provision of family counseling and rehabilitation services, work incentives, and family planning programs to reduce out-of-wedlock births, for all persons in the family, in order to promote self-support and child development and to strengthen family life. . . . By making those with marginal incomes eligible for AFDC by raising the standard of need, more persons would be eligible for such services, which Congress considered vital to cut down in the long run the numbers dependent on welfare." (Citation omitted.) *Lampton* v. *Bonin*, 304 F. Supp., at 1389.

We suggested the same thing in *Rosado*, 397 U. S., at 413. While the Court recognizes that the Texas system deprives persons with an "unmet need" of an opportunity to utilize these services (n. 10) and thus relegates these persons to perpetual dependence on welfare, the realization is apparently a source of no concern. But it was a source of tremendous concern to Congress. The value of medical assistance alone to an average Texas AFDC family is in the range of $50–$60 per month. Memorandum for the United States as *Amicus Curiae* 7 n. 5. Since needy families are rendered more needy by Texas' system, their ability to escape the confines of the welfare rolls is substantially impaired. At the same time, the goals of Congress as described in the preceding quotation are also impaired. There is no reason, nor any justification, for reading the statute this way.

Since I believe that Congress intended that as many needy persons as possible be permitted to avail themselves of the various services provided or improved in the 1968 amendments, I again disagree with the conclusions of the Court.

F. In concluding my analysis of this aspect of Texas' percentage-reduction system, I add one final note. Thus far I have confined myself to examining the specific provisions of the AFDC legislation. In attempting to focus on each section individually in order to determine its role in the statutory scheme, something of the general flavor of the overall legislation is undoubtedly lost. That flavor, it seems to me, is to assist needy families to maintain strong family bonds and to assist needy individuals to realize their potential as unique human beings by providing them with the basic necessities of life, along with incentives and training to encourage them to work to help themselves. The Texas system negates the salutary aspects of the legislation by deterring the needy from working, by depriving the needy of social services, and by excluding some needy from any AFDC aid whatsoever. There is no conceivable reason to permit Texas to subvert the aims of Congress in this way.

II

Appellants also challenge the percentage-reduction figure itself. It is agreed that Texas has established an identical standard of need for the four social welfare programs that it administers—Old Age Assistance (OAA), Aid to the Blind (AB), Aid for the Permanently and Totally Disabled (APTD), and AFDC. But Texas provides 100% of recognized need to the aged and 95% to the disabled and the blind, while it provides only 75% to AFDC recipients. It is this disparity to which appellants also object.

A. Appellants base their primary attack on the Fourteenth Amendment; they argue that the percentage distinctions between the other welfare programs and AFDC reflect a racially discriminatory motive on the part of Texas officials. Thus, they argue that there is a violation of the Equal Protection Clause. I believe that it

is unnecessary to reach the constitutional issue that appellants raise, and, therefore, I offer no opinion on its ultimate merits. I do wish to make it clear, however, that I do not subscribe in any way to the manner in which the Court treats the issue.

If I were to face this question, I would certainly have more difficulty with it than either the District Court had or than this Court seems to have. The record contains numerous statements by state officials to the effect that AFDC is funded at a lower level than the other programs because it is not a politically popular program. There is also evidence of a stigma that seemingly attaches to AFDC recipients and no others. This Court noted in *King* v. *Smith*, 392 U. S., at 322, that AFDC recipients were often frowned upon by the community. The evidence also shows that 87% of the AFDC recipients in Texas are either Negro or Mexican-American. Yet, both the District Court and this Court have little difficulty in concluding that the fact that AFDC is politically unpopular and the fact that AFDC recipients are disfavored by the State and its citizens, have nothing whatsoever to do with the racial makeup of the program. This conclusion is neither so apparent, nor so correct in my view.

Moreover, because I find that each one of the State's reasons for treating AFDC differently from the other programs dissolves under close scrutiny, as is demonstrated, *infra*, I am not at all certain who should bear the burden of proof on the question of racial discrimination. Nor am I sure that the "traditional" standard of review would govern the case as the Court holds. In *Dandridge* v. *Williams*, *supra*, on which the Court relies for the proposition that strict scrutiny of the State's action is not required, the Court never faced a question of possible racial discrimination. Percentages themselves are certainly not conclusive, but at some point a showing that

state action has a devastating impact on the lives of minority racial groups must be relevant.

The Court reasons backwards to conclude that because appellants have not proved racial discrimination, a less strict standard of review is necessarily tolerated. In my view, the first question that must be asked is what is the standard of review and the second question is whether racial discrimination has been proved under the standard. It seems almost too plain for argument that the standard of review determines in large measure whether or not something has been proved. *Whitcomb* v. *Chavis*, 403 U. S. 124, 149 (1971); *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960).

These are all complex problems, and I do not propose to resolve any of them here. It is sufficient for me to note that I believe that the constitutional issue raised by appellants need not be reached, and that in choosing to reach it, the Court has so greatly oversimplified the issue as to distort it.

B. Appellants also challenge the distinction between programs under Title VI of the 1964 Civil Rights Act, 42 U. S. C. § 2000d:

> "No person in the United States shall, on the ground of race, color, or national origin, . . . be subjected to discrimination under any program or activity receiving Federal financial assistance."

Only last Term in *Griggs* v. *Duke Power Co.*, 401 U. S. 424 (1971), we had occasion to strike down under Title VII of the 1964 Act, 42 U. S. C. § 2000e, employment practices that had a particularly harsh impact on one minority racial group and that could not be justified by business necessity. We indicated in that case that "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups."

Id., at 432. We said, in fact, that "Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation." *Ibid.* (emphasis in original). That decision even placed the burden on the employer "of showing that any given requirement must have a manifest relationship to the employment in question." *Ibid.*

There has been a paucity of litigation under Title VI, and I am not prepared at this point to say whether or not a similar analysis to that used in *Griggs* should be used in Title VI cases. This is a question of first impression in this Court, and I do not think we have to reach it in this case. I include this section only to make plain that I do not necessarily reject the argument made by appellants; I simply do not reach it.

C. This brings me to what I believe disposes of the question presented: the disparity between the various social welfare programs is not permissible under the federal statutory framework.

The four social welfare programs offered by Texas are funded in part by the Federal Government. Each program is governed by a separate statute: OAA, 42 U. S. C. § 301 *et seq.*; AFDC, 42 U. S. C. § 601 *et seq.*; AB, 42 U. S. C. § 1201 *et seq.*; APTD, 42 U. S. C. § 1351 *et seq.* No State is compelled to participate in any program, and any State that wants to participate can choose to do so in one, several, or all of the programs.

There is no doubt that States are free to choose whether or not to participate in these programs, and it is also clear that each State has considerable freedom to allocate what it wants to one or more programs by establishing different standards of need to compute eligibility for aid. *King* v. *Smith*, 392 U. S., at 318–319. It is also true, however, that the basic aims of the four programs are identical. Indeed, when Congress first enacted the programs in 1935, it viewed them all as necessary to

provide aid to families unable to obtain income from private employment. The beneficiaries of the various programs shared the basic characteristics of need and dependence. H. R. Rep. No. 615, 74th Cong., 1st Sess., 3. While the programs as they now exist go well beyond merely furnishing financial assistance as they did originally, they still maintain similar goals.

Moreover, all four programs were simultaneously amended in 1956 to provide for social and rehabilitative services to enable all needy individuals to attain the maximum economic and personal independence of which they were capable. Each program now requires a State to describe, in its plan for each social welfare program it administers, the services it offers to accomplish this objective. See 42 U. S. C. §§ 302 (a)(11); 602 (a)(14); 1202 (a)(12); 1352 (a)(11).

Congress has given the States authority to set different standards of need for different programs. But where, as here, the State concludes that the standard of need is the same for recipients of aid under the four distinct statutes, it is my opinion that Congress required that the State treat all recipients equally with respect to actual aid. In other words, as I read the federal statutes, they are designed to accomplish the same objectives, albeit for persons disadvantaged by different circumstances.

States clearly have the freedom to make a bona fide determination that blind persons have a greater need than dependent children, that adults have a higher standard of need than children, that the aged have more need than the blind, and so forth.

But, in this case, Texas made an independent determination of need, and it determined that the need of all recipients was equal. In this circumstance, I find nothing in the federal statute to enable a State to favor one group of recipients by satisfying more of its need,

while at the same time denying an equally great need of another group. The purposes and objectives of the statutes are the same, those eligible for aid are suffering equally, and Congress intended that once a State chose to participate in the programs similarly situated persons would be treated similarly.

Everything in this record indicates that the recipients of the various forms of aid are identically situated. Although the District Court accepted the State's contentions that there are differences between AFDC and other recipients which warranted different treatment under the federal statutes, I find each of the reasons offered totally unpersuasive.

First, Texas argues that AFDC children can be employed, whereas recipients of other benefits cannot be. Assuming *arguendo* that this is true, it is an argument that falls of its own weight. Whatever income the children earn is subtracted from need, or it is excluded from consideration under § 402 (a)(8) to encourage self-help. Thus, income is already reflected in the computation of payments, or it is excluded in order that a specific legislative goal may be furthered. Thus, income is irrelevant in any explanation of the differences between the percentage reductions applied to the various programs. It should also be noted that a recipient's income is also taken into consideration in programs other than AFDC. See 42 U. S. C. §§ 302 (a)(10)(A); 1202 (a)(8); 1352 (a)(8).

Second, the State maintains that AFDC families can secure help from legally responsible relatives more easily than recipients under other programs. Assuming again for purposes of discussion that this is true, it should be plain that any support from any relatives is subtracted from the State's grant. Moreover, appellants properly point out that recipients of aid in non-AFDC programs

often have a source of aid unavailable to AFDC recipients—the federal old age insurance, 42 U. S. C. § 201 *et seq.* Thus, there is no substance to this argument.

Third, Texas points to the likelihood of future employment for AFDC recipients, a likelihood that it says is nonexistent for older persons and others who receive aid. Federal law provides that a State may only consider income that is currently available in allocating funds. 45 CFR § 233.20 (a)(3)(ii). This contention is therefore irrelevant.

The State makes only two other arguments. One has already been rejected. Texas urges that the purposes of the federal programs differ, but the history belies this contention. The other is that the numbers of AFDC recipients is rising and this program should therefore bear the burden of monetary limitations. The obvious problem with this argument is that one fundamental purpose of AFDC aid is to enable people to escape the welfare rolls. But, under the Texas system, the aid is presently insufficient, people are unable to escape from dependency, and the rolls become larger. Had Texas not funded AFDC at a lower level than other programs, it is possible that the number of recipients would not have grown so large. The State's argument is a self-fulfilling prophecy on which it cannot rely to penalize AFDC recipients. Furthermore, there is nothing in the federal legislation to indicate that aid is to be reduced in a program merely because the number of beneficiaries of that program increases at a more rapid rate than in other programs. On the contrary, Congress has indicated that increased eligibility for AFDC is desirable, see 42 U. S. C. § 602 (a)(23); *Rosado* v. *Wyman, supra.* It would be extreme irony if AFDC recipients were penalized by a State because their numbers grew in accordance with congressional intent.

The conclusion that I draw from the statutes is that Congress intended equal treatment for all persons similarly situated. Congress left to the States the determination of who was similarly situated by permitting States to determine levels of need. Since Texas has decided that AFDC recipients have precisely the same need as recipients of other social welfare benefits, it is my opinion that the federal legislation requires equal treatment for all.

This conclusion finds support in the legislative history of the 1950 amendments to the social welfare legislation. In those amendments Congress made clear its intent to put AFDC recipients on a par with recipients of other welfare aid.

> "Today more than 1.1 million children under 18 years of age are receiving aid to dependent children through the State-Federal program because one or both of their parents are dead, absent from the home, or incapacitated. These children, regardless of the State in which they now live, will someday find their place in the productive activities of the Nation and, should the necessity arise, will take part in defending our Nation. Many of these children will be seriously handicapped as adults because in childhood they are not receiving proper and sufficient food, clothing, medical attention, and the other bare necessities of of life. The national interest requires that the Federal Government provide for dependent children *at least on a par* with its contributions toward the support of the needy aged and blind." S. Doc. No. 208, 80th Cong., 2d Sess., 105 (emphasis added).

Congress recognized that "families with dependent children need as much in assistance payments as do aged and blind persons." *Id.*, at 106. It concluded that

sound national policy was "for the States to provide payments for aid to dependent children comparable to those for the needy aged and blind." *Ibid.* It is evident that Congress rejected the notion that where AFDC recipients had the same need as other welfare beneficiaries, they should get less money. As Senator Benton said on the floor of the Senate:

> "There seems no reasonable basis for such inequitable treatment of mothers and of children by the Federal Government.
>
> "All of us with children know that it costs as much if not more to rear children in health, decency, and self-respect than to maintain an adult. It is surely no less important to make this investment in our future citizens than it is to provide decently for those who have retired. . . ." 96 Cong. Rec. 8813–8814.

In the 1950 amendments, Congress increased the federal funding of AFDC so that its beneficiaries would receive treatment equivalent to that received by beneficiaries of the other federal-state social welfare legislation. Where the needs of the people receiving aid under the various programs differed, Congress recognized that the amount of aid forthcoming should also differ. But where need was determined by the State to be equal for all recipients, Congress intended that all should receive an equal amount of aid. S. Doc. No. 208, 80th Cong., 2d Sess., 108. There is absolutely no indication in any subsequent congressional action that the intent of Congress has changed.

Accordingly, I would reverse the judgment of the District Court and remand the case for formulation of relief consistent with this opinion.